(21,125.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 135.

THE CITIZENS' NATIONAL BANK, M. J. FERRIS, PRESIDENT OF THE CITIZENS' NATIONAL BANK, AND A. J. QUISENBERRY, CASHIER OF THE CITIZENS' NATIONAL BANK, PLAINTIFFS IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY FOR THE USE AND BENEFIT OF BOYLE COUNTY, AND THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from Boyle circuit court	1	1
Caption	2	1
Statement	2	1
Summons	4	2
Officer's return	5	3
Order filing and overruling demurrer of defendant to statement.	6	3
Order filing and overruling special demurrer to statement	6	3
General demurrer to statement	7	3

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	Original.	Print.
Special demurrer to statement	7	4
Order noting filing of answer	8	4
Answer and response to statement	8	4
Order noting filing of reply to the answer and response of defendants	20	10
Reply to answer of defendants	20	10
Order noting filing of rejoinder	26	13
Rejoinder to reply of plaintiff	26	13
Motion by plaintiff to submit for judgment	29	14
Motion by defendants asking the court to separate its finding of facts from its conclusions of law	29	14
Judgment by the Boyle county court	30	14
Order noting filing of motion and grounds for new trial	32	15
Motion and grounds for new trial	32	15
Order tendering and filing bill of exceptions	33	16
Bill of exceptions	34	16
Testimony of Mr. John Quisenberry	34	16
Findings and judgment	49	23
Motion and grounds for new trial	51	25
Motion overruled	52	25
Judge's certificate to bill of exceptions	52	25
Supersedeas bond	53	26
Supersedeas and officer's return thereon	55	26
Order setting trial in circuit court	56	27
Order filing demurrer to answer	56	27
Demurrer to answer	57	27
Order overruling demurrer of defendant to jurisdiction of the county court	57	28
Order submitting for judgment	58	28
Judgment	58	28
Schedule for appeal	59	29
Clerk's certificate	59	29
Order noting filing of statement	60	29
Statement	60	29
Order granting appellant extension of time to file brief	61	30
Order submitting	61	30
Judgment	62	30
Opinion of the court by Hobson, judge	63	31
Order granting appellee extension of time to file petition for rehearing	73	36
Order setting aside order granting extension of time for filing petition for rehearing	74	36
Caption	75	37
Transcript from Boyle circuit court	75	37
Caption	75	37
Statement (petition)	75	37
Summons	77	38
Officer's return on summons	78	38
Order filing and overruling general demurrer to statement	79	39
Order filing and overruling special demurrer	79	39
General demurrer to statement	80	39
Special demurrer to statement	80	39

	Original.	Print.
Order noting filing of answer and response	81	40
Answer and response to statement	81	40
Order noting filing of reply	93	45
Reply to answer and response	93	45
Order noting filing of rejoinder	99	48
Rejoinder	99	48
Motion by plaintiff to submit for judgment	101	49
Motion by defendants asking the court to separate its finding of facts from conclusions of law	101	50
Judgment of the Boyle county court	102	50
Order noting filing of motion and grounds for new trial	104	51
Motion and grounds for new trial	104	51
Order tendering and filing bill of exceptions	105	52
Bill of exceptions	106	52
Testimony of John Quisenberry	106	52
Judgment of the Boyle county court	120	59
Motion and grounds for new trial	122	61
Judge's certificate to bill of exceptions	123	61
Supersedeas bond	124	62
Supersedeas	126	62
Officer's return on supersedeas	127	63
Order setting trial in Boyle circuit court	127	63
Order noting filing of demurrer to answer	127	63
Demurrer to answer	128	63
Order overruling demurrer of defendant to the jurisdiction of the county court	128	64
Order submitting for judgment	129	64
Judgment	129	64
Schedule	130	65
Mandate from the court of appeals	130	65
Order on mandate from court of appeals	131	65
Reply to amended answer	132	66
Amended answer and response	132	66
Reply to amended answer	139	70
Order filing demurrer to reply	141	71
General demurrer to reply	141	71
Order filing rejoinder	142	71
Rejoinder	142	71
Order submitting to final judgment	144	72
Order overruling demurrer to the reply in part and sustaining in part	144	72
Order offering to file an amended rejoinder	144	72
Order refusing to allow amended rejoinder to be filed	145	73
Judgment	145	73
Order directing clerk to copy amended rejoinder in this record	152	76
Amended rejoinder	152	77
Supersedeas bond	155	78
Supersedeas	156	79
Officer's return on supersedeas	157	79
Schedule	158	79
Clerk's certificate	158	80
Statement	161	80

	Original.	Print.
Order of submission	162	81
Judgment	162	81
Opinion	163	81
Assignment of errors	167	83
Petition for writ of error	172	88
Order allowing writ of error and approving bond	175	90
Writ of error	177	91
Bond	178	92
Original citation	182	93
Clerk's certificate	183	94

1 Pleas Before the Honorable the Court of Appeals of Kentucky, at the Capitol, in the City of Frankfort, Kentucky, on the Fifteenth Day of April, 1904.

Appeal from the Boyle Circuit Court.

COMMONWEALTH OF KENTUCKY, for the Use and Benefit of BOYLE COUNTY, and THE COMMONWEALTH OF KENTUCKY, Appellants,

vs.

THE CITIZENS NATIONAL BANK, M. J. FARRIS, President of the Citizens National Bank; J. A. QUINSBERRY, Cashier of Citizens National Bank, Appellees.

Be it remembered that heretofore towit, on the 4th day of August 1903 the appellants by *its* attorney filed in the clerk's office of the court of appeals a transcript of the record in words and figures following towit:

STATE OF KENTUCKY:

Boyle Circuit Court.

2 Pleas before Hon. M. C. Saufley, judge of the Boyle circuit court, had at the court house thereof, in Danville, Boyle County, Kentucky, on the — day of —— 1903, in the following styled action, viz:

Caption.

Statement.

COMMONWEALTH OF KENTUCKY, for the Use and Benefit of BOYLE COUNTY, and THE COMMONWEALTH OF KENTUCKY, Plaintiff-,

vs.

THE CITIZENS NAT'L BANK, M. J. FARRIS, President of the Citizens Nat'l Bank; J. A. QUISENBERRY, Cashier of Citizens Nat'l Bank, Defendant-.

Statement.

3 The undersigned sheriff of Boyle county states that the citizens National Bank of Danville, Ky., is a bank incorporation located and doing business in Danville, Boyle county, Ky., prior to and ever since the year 1892, and that the capital stock of said bank consists of fifteen hundred shares of $100.00 each during the years 1892, 1894, 1895, 1896 and 1897 of said time, and that each of said shares of stock during the years 1892, 1894, 1895, 1896 and 1897 was of the value of $170.00 per share, and the capital stock was 1000 shares in 1898 and 1899, of the value $160.00

per share, and that the president and cashier of said bank and said bank have failed to list said shares of stock in the name of the stockholders of said bank, or otherwise, for any of said years for county taxes, for the county of Boyle, or any other taxes, for any of said years, and that said bank has paid no taxes thereon for Boyle county for any of said years, and that each and all of said shares of said stock have been omitted to be assessed by the assessor of Boyle county and the board of supervisors of Boyle county for taxation for each and all of said years, and said shares of stock are held and owned by persons in Boyle county, and are liable for taxation for county purposes, for said county and said bank has knowledge of the names of each and all of the owners and holders of said stock; and that the value of said shares of stock in the aggregate during each of the said years 1892-94-95-96 and '97 was and is $205,000, and in the years 1898 and 1899, was $160,000, and the undersigned sheriff of Boyle county proposes in this statement to have said shares of stock listed and assessed for county taxes due Boyle county for each and all of said years, 1892, 1894, 1895, 1896 and 1897, aforesaid, at $205,000 per year, and for the years 1898 and 1899, $160,000 per year by the Boyle county court, and he files this statement with the clerk of the Boyle county court to have said court assess said stock and affix the penalty prescribed
4 by law for the failure of said bank and its president and cashier to list same as required by law, and ask that a summons be issued hereon against said bank and its president and cashier as required by law.

This fifteenth day of March, 1901.

G. W. COULTER,
Sheriff of B. C.

Said statement is endorsed on the back in words and figures as follows:

1901, March 15th, filed in clerk's office by G. W. Coulter sheriff, and summons and three copies issued. J. B. Nichols, clerk.

Said summons above mentioned and referred to is in words and figures as follows:

Summons.

Commonwealth of Kentucky to the sheriff of Boyle county, Greeting:

You are commanded to summon the Citizens national bank, M. J. Farris, president of the Citizens national bank, and J. A. Quisenberry, cashier of the Citizens national bank, to answer on the first day of the next April term of the Boyle county court a statement in writing filed in the office of the clerk of the Boyle county court by G. W. Coulter, sheriff of Boyle Co., proposing to have said
5 court list and assess the taxation for county purposes for the years 1892, 1894, 1895, 1896, 1897, 1898 and 1899, the shares of stock in said bank, which said shares of stock said cashier

and president and bank failed to list for taxation for said time, and which shares of stock were omitted by the assessor of Boyle county and the board of supervisors of Boyle county to be listed or assessed for said time, and to affix the penalty provided by law for the failure to list same, and warn them that upon their failure to answer, the statement will be taken for confessed, or they will be proceeded against for contempt.

And you will make the due return of this summons on the 1st day of the next April term of this court.

Given under my hand as clerk of said court, this 15th day of March, 1901.

J. B. NICHOLS, *Clerk.*

Officer's Return.

Executed on the Citizens National Bank in Danville, Kentucky, by delivering to M. J. Farris, president of said bank, a copy of the within summons.

Executed on M. J. Farris, president, and J. A. Quisenberry, cashier of said Citizens — bank, by delivering to each of them a copy of the within summons, this 16th day of March 1901.

6 G. W. COULTER,
Sheriff of B. C.

On the 17th day of June, 1901, that being the first day of the regular June term of said court, the following order was made and duly entered of record:

Order Filing — Overruling Demurrer to Statement.

The def't by att'y this day filed a general demurrer to the statement of the pl'ff, which being submitted to the court, the court upon consideration overruled said demurrer.

On the same day of said term of said court, the following order was made by the court and duly entered of record:

Order Filing and Overruling Special Demurrer to Statement.

Thereupon the def't also filed a special demurrer to said statement of pl'ffs, which being submitted to the court the court upon consideration overruled said special demurrer, to which ruling of the court on both general and special demurrers, the def't excepts.

Said general demurrer above mentioned and referred to, is
7 in words and figures as follows:

General Demurrer to Statement.

The aforesaid def'ts, The Citizens National Bank, M. J. Farris, president of the Citizens national bank, and J. A. Quisenberry, cashier of the Citizens national bank, say that the plaintiff's state-

ment or petition does not state facts sufficient to constitute a cause of action against them.

ROBERT T. QUISENBERRY,
Att'y for the Aforesaid Defendants.

Said demurrer is endorsed on back in words and figures as follows: Filed April 15th, 1901. J. B. Nichols, clerk.

Said special demurrer above mentioned and referred to is in words and figures as follows:

Special Demurrer to Statement.

The def'ts, The Citizens National Bank, M. J. Farris, president of the Citizens national bank, and J. A. Quisenberry, cashier of the Citizens national bank, demur to the plaintiff's petition or statement because it shows that this court has no jurisdiction of
8 the subject of the plaintiff's action, and because it shows that the plaintiff has no lagal capacity to maintain this action.

ROBERT T. QUISENBERRY,
Attorney for the Citizens National Bank.
M. J. FARRIS,
President of the Citizens National Bank, and
J. A. QUISENBERRY,
Cashier of the Citizens National Bank,
the Aforesaid Defendant.

Said demurrer is endorsed on back in words and figures as follows: Filed April 15th, 1901. J. B. Nichols, Clerk.

On July 1st, 1901, that being Monday morning, the following order was made in said action by the court, and duly entered of record:

Order Noting Filing of Answer.

The def'ts herein this day filed their answer.

Answer and Response to Statement.

The aforesaid def'ts, The Citizens Nat'l Bank, M. J. Farris, president of the Citizens nat'l bank, and J. A. Quisen-
9 berry, cashier of the Citizens nat'l bank, for their answer to the statement filed herein in the above entitled action, admit that the capital stock of the Citizens national bank, was evidenced by 1500 shares of the par value of $100.00 each, during the years 1892, 1894, 1895, 1896, 1897, but they distinctly deny that each of said shares of stock during the years of 1892, '94, 1895, '96, '97, was of the value of $170.00 per share: and they admit that the capital stock of said bank was evidenced by 1000 shares of the par value of $100.00 each during the years 1898 and 1899, but they distinctly

deny that each of said shares of stock during the years 1898, 1899, was of the value of $160.00 per share; and they deny "that said bank has failed to list said shares of stock in the name of the stockholders or of the bank or otherwise for any of said years for county taxes for the county of Boyle or any other taxes, for any of said years," and they deny that "said shares of stock are held and owned exclusively by persons in Boyle County and deny that any of said shares of stock "are liable for taxation for county purposes for said county," and they deny "that the value of said shares of stock in the aggregate, or otherwise, during each of said years 1892, 1894, '95, '96, '97, was $205,000, and in the years 1898 and 1899, was $160,000.

The aforesaid def'ts allege that the president and cashier of the Citizens national bank aforesaid, have caused to be kept at all times a full and correct list of the names and residences of all the share holders in said bank, and the number of shares held by each
10 in the office where its business is transacted, subject to the inspection of all share holders, and creditors of the bank, and the officers authorized to assess taxes under the State authority, during business hours of each day, in which business was legally transacted, and they allege that at no time during the existence of said bank has any officer authorized to assess taxes under the State authority of the State of Kentucky exercised his rights to inspect said list, save and except the assessor of Boyle county, Kentucky, who inspected said list during the fall of the year 1899, and also during the fall of 1900.

Paragraph 2.

The aforesaid def'ts, further answering the aforesaid statements, allege that by article 2 of chapter 92, of the General Statutes of Kentucky, commonly known as the Hewitt law, it was provided: "That shares of stock in State and national banks and other institutions of loan or discount, and of all corporations required by law to be taxed on their capital stock, shall be taxed 75 cents on each share thereof equal to $100.00 or on each $100.00 of stock therein owned by individuals, corporations or societies, and said banks, institutions, and corporations, shall in addition pay upon each $100 or so much of their surplus, undivided surplus, undivided profits or undivided accumulations, as exceeds an amount equal to 10% of their capital stock, the same rate of taxation that is assessed upon real
11 estate which shall be in full of all tax, State, county and municipal," and also that "the cashier of a bank and the treasurer of any other institution, or corporation whose stock is taxed, shall on the first day of July in each year report to the auditor of public accounts, the true amount of capital stock, the true amount of surplus, undivided profits, or undivided accumulations, and how or in what said surplus, undivided profits, or undivided accumulations is invested, and pay into the treasury the amount of the tax due."

"If such tax be not paid, the cashier and his sureties shall be liable for the same and 20% upon the amount and any State bank, institution, or corporation, shall thereby forfeit the privileges of its

charter," and the aforesaid defendants further allege that it was also provided by the aforesaid article No. 2 of chapter 92, of the General Statutes of Kentucky, "that each of said banks, institutions, incorporations, by its proper corporate authority, with the consent of the majority in interest of a quorum of the stockholders at a regular or called meeting thereof, may give its consent to the levying of said tax and agree to pay the same as herein provided, and waive and release all rights under the acts of Congress or under the charters of the State banks, to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such
12 bank, and delivered to the governor of this Commonwealth; and upon such agreement the consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all taxation whatsoever, so long as said tax shall be paid during the corporate existence of said bank.

The aforesaid def'ts further allege, that The Citizens' National Bank, one of the above def'ts, did by its proper corporate authority, with the consent of a majority in interest of a quorum of its stock holders, at a called meeting thereof, held on the 8th day of November, 1887, for that purpose, give its consent to the levying of said tax and agreed to pay the same as herein above set out, and agreed to waive and release all rights under the acts of Congress to a different mode or smaller rate of taxation, which consent and agreement to and with the State of Kentucky was evidenced by writing under the seal of the aforesaid bank, and delivered on or about Nov. 8th, 1887, to the gov. of the Commonwealth of Kentucky.

The aforesaid def'ts further allege that the cashier of The Citizens' National Bank, one—the aforesaid def'ts herein, did on the 1st day of July, 1892, '93, '94, '95, '96, report to the auditor of public accounts of Kentucky the true amount of the capital stock, the true amount of surplus, the undivided surplus, and undivided accumulations, and how or in what said surplus, undivided profits, and undivided accumulations, of the said Citizens national bank, were invested, and the said bank did on the 1st day of July, 1892,
13 '93, '94, '95, '96, pay into the treasury of the State of Kentucky the whole amount of tax due thereon, in accordance with the terms and provisions of art. 2, of chapter 92, of the General Statute of Kentucky, which the court of appeals of Kentucky, by an opinion filed June 1st, 1895, in the case of The Commonwealth for use, etc., *v.* Farmers Bank of Kentucky, etc. (Kentucky Law Reporter, 465), 97 Kentucky, 590, declared was the law, and "in full force, and the bank must be taxed under its provision."

These def'ts allege that by virtue of the aforesaid opinion and decision of the court of appeals of Kentucky, art. 2 of chapter 92 of the General Statute- of Kentucky continued to be and was the law which governed, controlled, regulated and provided for the taxation of all banks, which accepted its provisions and paid taxes thereunder until March 24th, 1897, on which date the aforesaid opinion and decision of the court of appeals of Kentucky was overruled and

reversed by said court by its opinion and decision in the case of the Deposit Bank of Owensboro,—Davis County (19 Ky. L. R., 248).

These defendants allege that the said defendant, The Citizens National Bank, was compelled to obey the laws of the Commonwealth of Kentucky, as the same was declared unto it by the court of appeals of Kentucky, and they state that said bank did fully, faithfully and promptly obey and follow the law as so declared to it by said court during the years '92, '93, '94, '95, '96, and did make report of its property and list the same for said years on the
14 1st day of July of each of the aforesaid years with auditor of public accounts for the purpose of taxation, and did pay the taxes assessed thereon in full, in accordance with the provisions of said article 2 in said chapter 92, in said General Statutes of Kentucky, which payments, the State of Kentucky demanded and accepted at the time and still retain, and which demand upon the part of the State said bank was compelled to obey, or otherwise place itself in the attitude of defying the law of the State of Kentucky, and thereby subjecting its property and effects to the risk of being seized and sold by the officers of the law for said taxes, to the irreparable injury to the business of said bank, all of which acts upon the part of said Citizens National Bank, these def'ts plead and offer in full defense against the proceedings set up against them by the statement in the above entitled action, as a full and complete defense against any and all proceedings against said bank, or its president and cashier, for the purpose of either assessing, levying or collecting either tax or penalty upon either the property of said bank, or the shares of stock therein for the years of '92, '93, '94, '95 and '96.

Paragraph 3.

The aforesaid defendants allege that the act of Kentucky legislature entitled An act relating to revenue and taxation, upon which the aforesaid statement is based and filed, and these proceed-
15 ings commenced, became a law Nov. 11th, 1892, and that in accordance with its provisions the first collection and payment of taxes made thereunder was made in 1893, which facts these defendants plead as an additional — against, and as a bar to all attempts herein made or otherwise to assess and to collect taxes or penalties under said laws from these def'ts or either of them for the year 1892.

These defendants further allege that the aforesaid act relating to revenue and taxation does not determine and direct the manner and place for taxing shares of national banking association- located within the State, neither does it direct that said shares shall be taxed at all, but in case a contrary interpretation should be placed upon said act by the court, these defendants allege that the right and power set forth in the aforesaid statement to assess the stock of the aforesaid bank, affix penalties thereon for failure to list with them for taxation, and to collect the same and taxes thereon for the years '92, '93, '94, '95 and '96.

Paragraph 4.

These defendants allege that by an act entitled An act relating to the taxation of the shares of stock in national banks, approved March 21st, 1900, it was enacted by the General Assembly of the Commonwealth of Ky.

1. That the shares of stock in each national bank of this State shall be subject to taxation for all State purposes, and shall be subject to taxation for the purposes of each county, city, town,
16 and taxable district in which the bank is located.

2. For purposes of the taxation provided for by the next proceding section, it shall be the duty of the president and cashier of the bank to list the said shares of stock with the assessing officers authorized to assess real estate for taxation, and the bank shall be and remain liable to the State, county, city, town and district for the taxes upon said stock.

3. When any of said shares of said stock have not been listed for taxation for any of said purposes under levy or levies of any year or years since the adoption of the revenue law of 1892, it shall be the duty of the president and cashier to list the same for taxation under said levy or levies; Provided, that where any national bank has heretofore for any year or years paid taxes upon its franchise as provided in article 3 of the revenue law of 1892, said bank shall be excepted from the operation of this section as to said year or years, and provided further, that where any national bank has heretofore for any year or years paid State taxes under the Hewitt bill in excess of the State taxes required by this act for the same year or years said bank will be entitled to credit by said exsess upon its State taxes required by this act.

4. All assessment of shares of stock contemplated by the act shall be entered upon the assessors' book, certified and reported by the assessing officers as assessment- of real estate are entered,
17 certified and reported, and the same shall be certified to the proper collecting officers for collection as assessment- of real estate are certified for collection of taxes thereon.

5. The assessment of said shares of stock and collecting of taxes thereon as contemplated by this act may be enforced as assessment- of real estate and collections thereon may be enforced.

6. The purpose of this act is to place national banks of this State with respect to taxation upon the same footing as State banks as nearly as may be consistently with said article 3 of the revenue law and said decision of the Supreme Court.

7. Whereas, it is important that State banks and national banks should be taxed equally for all purposes, an emergency exists, and this act shall take effect and be in force from and after its passage."

All of which aforesaid provisions of the aforesaid act and the whole of the aforesaid act these def'ts aver and charge are in contravention of the Constitution and laws of the United States and in conflict therewith, and therefore void; and further, that the proceedings authorized by the aforesaid act when placed in motion together with the act itself operate to deprive the owners of shares of stock in national banks in the State of Kentucky of their property therein

without due process of law, and for which additional reason, said act is void.

18 Paragraph 5.

These defendants allege that the aforesaid article 2 of chapter 92, of the General Statutes of Kentucky, commonly known as the Hewitt law, continued until March 24th, 1897, to be the law regulating the taxation of all those national banks which accepted its terms therein provided, and that the aforesaid, the Citizens national bank, having so accepted said article 2, and having fully and faithfully complied with its terms up to March 24th, 1897, is thereby exonerated and excused from having either the taxes or the penalties imposed upon the shares thereof which are sought to be laid thereupon by these proceedings, and the filing of the aforesaid statements, and these defendants further allege that the General Assembly of the Commonwealth of Ky., has since Jan. 1st, 1892, enacted no valid law directing the manner and place of taxing shares of stock in national banking association- or directing that said shares shall be taxed at all, and these def'ts allege that the said The Citizens national bank obey all laws in the State of Kentucky regulating the taxation of its shares of stock by keeping a list of its stockholders open for its inspection as set forth in par. 1 of this answer, and that said bank is not to be adjudged delinquent in any duty pertaining to the taxation of its shares of stock on account of the failure of the officers authorized to assess taxes under the authority of the
19 State of Kentucky, to do their duty by inspecting said list, and taxing the owners and holders of said shares, and including the same in the valuation of the personal property of said holders or owners of such shares in assessing taxes imposed by authority of the State of Ky. And having fully answered,

Wherefore, these defendants, the said Citizens National Bank, M. J. Farris, and J. A. Quisenberry, pray that it be adjudged that they have fully answered and responded to the aforesaid statement and that all demands of the said statement be denied, that the same be dismissed, and that the said Commonwealth of Ky., for the use and benefit of Boyle county and the Commonwealth of Ky., take nothing, and that neither tax nor penalty be imposed upon the shares of the aforesaid bank, and that all the aforesaid def'ts be discharged and saved harmless, and be awarded their costs herein, together with all relief to which they may appear to be entitled.

THE CITIZENS NATIONAL BANK,
By M. J. FARRIS,
President of the Cit. Nat. Bank.
J. A. QUISENBERRY,
Cash. the Cit. Nat. Bank,
By ROBERT QUISENBERRY,
Their Att'y.

Said answer and response is endorsed on back in words
20 and figures as follows:

1901, July 1st, filed in the clerk's office, J B. Nichols, clerk.

On July 5th, 1901, the following order was made in said action by the court, and duly entered of record:

Order Noting Filing of Reply to the Answer & Response of Def't.

The plaintiff, by att'y, this day filed herein their reply to the first paragraph to the answer of the defendant-.

Said reply above mentioned and referred to is in words and figures as follows:

Reply to Answer of Def'ts.

Plaintiff's for reply to the 1st paragraph of answer, state that they have no knowledge or information sufficient to form a belief that the president or cashier of the Citizens national bank have caused to be kept at all times or at all a full and correct list of the names or residences of all or any of the share holders in said bank
21 or the number of shares held by each in the office where its business is transacted subject to the inspection of all share holders or creditors of the bank or officers authorized to assess taxes under State authority during the business hours of each day in which business was legally transacted, and deny that at no time during the existence of said bank has any officer authorized to assess taxes under State authority of the State of Kentucky exercise his right to inspect said list, and plaintiffs aver that they have no knowledge or information sufficient to form a belief that the assessor of Boyle county, Ky., inspected said list during the fall of the year 1899, or during the fall of the year 1900, and if said assessor did inspect said list, in the fall of 1900, it was the duty of the president and the cashier of said bank to list and assess with said assessor the shares of stock in said bank for the years 1893, '94, '95, '96, '97, '98, '99, as at said time in the fall of 1900.

Def'ts did list with said assessor the shares of stock in said bank under the act of 1900 for taxes due Boyle Co. for the year 1901.

Par. 2.

For reply to the second par. of the answer, pl'ffs say they have no knowledge or information sufficient to form a belief that the def't bank did by its proper corporate authority with the consent of a majority in interest of a quorum of its stock holders at a call-meeting thereof held on the 8th day of Nov., 1887, for that
22 purpose, give its consent for the levying of the said tax or agree to pay same or agree to waive or release all rights under the acts of Congress or to a different mode or a smaller rate of taxation or that said consent or agreement to and with the State of Kentucky was evidenced by writing under the seal of the aforesaid bank or delivered on or about Nov. 8th, 1887, or that the cashier of the Citizens national bank on the 1st day of July, 1893, '92, '94, '95, '96, report- to the auditor of the State of the public accounts the true amount of the capital stock or the true amount of

surplus, or undivided surplus or undivided accumulation or how or in what said surplus or undivided profits or undivided accumulations of said bank were invested, or that said bank did on July 1st, 1892, '93, '94, '95, or '96, pay into the treasury of the State of Ky. the whole amount of taxes due thereon in accordance with the terms and provisions of article 2, chapter 92, of the General Statutes of Ky., and deny that the court of appeals of Kentucky by an opinion filed June 1st, 1895, in the case of the Commonwealth for the use and benefit, etc. *v.* Farmers Bank, etc., 97th Ky., 590, declared that article 2 of chapter 92 of General Statutes of Kentucky was the law or in full force or that the banks must be taxed under it.

Plaintiffs aver that said opinions in said cases affirm said cases upon a divided court, three of the judges out of the seven
23 dissenting from said opinion-, and deny that by virtue of the aforesaid opinion or decision in the court of appeals in Ky., article 2 of chapter 92 of the General Statute- of Ky. continued to be or was the law which governed or controlled or regulated or provided for the taxation of all banks which accepted its provision or paid taxes thereunder until March 24th, 1897.

Plaintiffs deny that said bank was compelled to obey the laws of the Commonwealth of Ky., as the same were declared under it by the court of appeals of Ky., and deny that said bank did fully or faithfully or promptly or at all obey or follow the law as so declared to it by the said court during the years 1892, '93, '94, '95, '96, or did make report of its property or list of same for said years on first day of July on each of the aforesaid years or at any other time with the auditor of public accounts or did pay the taxes assessed thereon in full in accordance with the provisions of said art. 2 of the said chapter 92 of the General Statutes of Ky., or that the State of Ky. demanded or accepted such payments at the time or still retain- them and deny that the said bank was compelled to obey or otherwise place itself in the attitude of defying the laws of the State of Kentucky or thereby subjecting its property to the risk of being seized or sold by the officers of the law for said taxes or to the irreparable injury of said business of said bank and deny that there was
24 any demand on the part of the State that said bank should list or pay said taxes under said act and article 2 of chapter 92 of General Statutes of Kentucky, said article and act were repealed by an act of the General Assembly of the Commonwealth of Kentucky, approved on — day of —— 1892, and was never in force thereafter and of said act said bank had full knowledge and notice.

3. For reply to the 3rd paragraph of answer of def'ts, pl'ffs deny that the rights and powers set forth in the aforesaid statement to assess the stock of the aforesaid banks affix thereon for failure to list the same for taxation and to collect the same and taxes thereon for the years 1892, '93, '94, '95, '96, did not accrue within five years next preceding the day on which the aforesaid statement was filed before the aforesaid court and this action was commenced.

Par. 4. Plaintiffs for a reply to the 4th paragraph to the defendants' answer, deny that all of which aforesaid provisions of the afore-

said act or the whole or any of the aforesaid act are in contravention of the Constitution or laws of the United States or in conflict therewith or void or that the proceedings authorized by the aforesaid act when placed in motion together with the act itself operate to deprive the owners of shares of stock in national banks in the State of Kentucky of their property therein without due process of law or for that reason or for any other reason said act is void and said act "in motion" dispels the illusion of the def't that it can no longer escape the payment of municipal, county and district taxes for the
25 protection it receives under the law.

Par. 5. For the answer to the 5th par. of defendants' answer plaintiffs deny that article 2 of chapter 92 General Statutes of Kentucky commonly known as the Hewitt law continued until March 24th, 1897, to be the regulating law of the taxation of all those national banks which accepted its terms as therein provided and den*ies* that the Citizens national bank accepted said article 2 or fully or faithfully or at all complied with its terms from 1892 to March 4th, 1897, or at any other time between said date and den*ies* that it is thereby or at all exonerated or excused from having either the taxes or the penalties imposed upon the shares thereof by the proceedings herein and deny that the General Assembly of the Commonwealth of Kentucky has since Jan. 1st, 1892, enacted no valid law directing the manner or place — taxing shares of stock in national banking associations or directing that said shares be taxed at all and den*ies* that these def'ts obey all laws in the State of Ky., regulating the taxation of its shares of stock by keeping a list of its stockholders open for inspection as set forth in par. 1 of their answer; and deny that said bank is not to be judged delinquent in any duty pertaining to the taxation of its shares of stock on account of the failure of the officers authorized to assess taxes under the authority of the State of Kentucky to do their duty by inspecting said list or taxing the owners or holders of said shares and including the
26 same in the valuation of the personal property of the owners or holders of such shares in assessing taxes imposed by authority in the State of Kentucky.

Wherefore, plaintiff- pray*s* for the assessment and the fixing of penalties asked of said shares of stock in said bank as asked in the statement herein and for all proper relief.

ROBERT HARDING,
Att'y for Pl'ff-.

Said reply is endorsed on back in words and figures as follows: 1901, July 5, filed in clerk's office. J. B. Nichols, clerk.

On the same day of said term of said court, the following order was made in said action by the court and duly entered of *action.*

Order Noting Filing of Rejoinder.

The def't- by att'y this day filed herein, their rejoinder to the reply of pl'ff.

Rejoinder to Reply of Pl'ff.

27 The aforesaid def'ts, the Citizens National Bank, M. J. Farris, president of the Citizens national bank, and J. A. Quisenberry, cashier of the Citizens national bank, for their rejoinder to the reply filed herein in the above entitled action, deny that it was, or is, the duty of the cashier and president of the said The Citizens national bank, to list and assess with the assessor of Boyle county, Ky., or any other assessor or officer whatever the shares of stock in the aforesaid bank, either for the years 1893, '94, '95, '96, '97, '98, and '99, or for any year or years, or time or period of time whatever, and the deft's deny that said president and cashier did list with said assessor or any other officer whatever the shares of stock in said bank for taxes either due Boyle Co., for the year 1901, or for any other taxes either under the act of 1900 or under any other act or law whatever.

Paragraph 2.

The aforesaid def'ts deny that article 2, chapter 92 of the General Statute- of Kentucky was ever repealed by act of the General Assembly of the Commonwealth of Ky., either approved on the —— day of ——, 1892, or at any other time, and deny that said article 2 of chapter 92, was "never in force subsequent to the aforesaid —— day of ——, 1892, and deny that said The Citizens national
28 bank, had either knowledge or notice of any such act of a repeal as aforesaid."

Paragraph 4.

The aforesaid defendants deny that said act of the General Assembly of the Commonwealth of Kentucky approved March 21st, 1900, "when in motion" dispels any illusion of the defendants that it can any longer escape the payment of municipal, county and district taxes for the protection it receives under the law, or otherwise or at all and especially deny that they or either of them have ever at any time been afflicted in the slightest degree with any illusion on the subject of taxation.

Wherefore, these defendants pray as they have heretofore prayed in their answer and response herein, and will so ever pray.

THE CITIZENS NATIONAL BANK,
By M. J. FARRIS, *President of Cit. Nat. Bank.*
J. A. QUISENBERRY,
Cash. of Cit. Nat. Bank,
By ROBERT T. QUISENBERRY,
Att'y, Danville, Kentucky.

Said rejoinder is endorsed on back in words and figures
29 as follows:
1901, July, filed in open court. J. B. Nichols, clerk.

On the same day of said term of said court, the following order was made in said action and duly entered of record:

Motion by Pl'ff to Submit for Judgm't.

On motion of the pl'ff, by att'y, this cause is submitted to the court for its judgment, to the granting of which motion, the def'ts, by att'y, except.

On the same day of said term of said court, the following order was made in said action and duly entered of record:

Motion by Def'ts Asking the Court to Separate its Finding of Facts from Conclusions of Law.

The def'ts herein, this day filed a motion asking the court to separate its finding of facts from conclusions of law before rendering a judgment herein, and the court took time.
Said motion above mentioned and referred to is in words and figures as follows:

The law and facts in the above entitled cause having been
30 submitted to the court, now comes the aforesaid def'ts by their att'y Robert T. Quisenberry, and moves the court, at the conclusion of hearing the evidence and the testimony in the said cause that said court separate its findings of facts and conclusions of law.

ROBERT T. QUISENBERRY,
Att'y for Def'ts.

Said motion is endorsed on back in words and figures as follows:
1901, July 5th, filed. J. B. Nichols, clerk.

On the same day of said term of said court the following judgment was rendered by the court in said action and duly entered of record:

Judgment by Boyle County Court.

Upon the pleadings and exhibits on file, and the proof heard, the court is of the opinion and so decides that the shares of stock in the Citizens national bank is liable for taxation for county purposes for the years 1894, '95, '96, '97, '98 and '99, and it is now ordered that said shares of stock be listed and assessed and entered by the clerk of this court in a book kept by him for said purpose in the name of said bank for the year 1894, as 1500 shares at the cash valuation of
31 $242,500.00 upon which the sheriff will collect the sum of $327.37 that being 13½ cents on the $100.00 of same levied

for county purposes for said year, and for the year 1895, as 1500 shares at the cash valuation of $242,900, upon which the sheriff will collect the sum of $352.20 that being 14½ cents on the $100.00 of same, levied for county purposes for said year, and for the year 1896, as 1500 shares at the cash valuation of $243,400 upon which the sheriff will collect the sum of $415.95, that being 17½ cents on the $100.00 of same levied for county purposes for said year, and for the year 1897 as 1500 shares at the cash valuation of $243,850.00 upon which the sheriff will collect the sum of $451,12, that being 18½ cents on the $100.00 of same levied for county purposes in said year, and for the year 1898, at 1500 shares at the cash valuation of 180,000.00 dollars upon which the sheriff will collect $585.00, that being 32½ cents on the $100.00 of same levied for county purposes for said year, and for the year 1899, as 1000 shares at a valuation of $140,000.00 upon which the sheriff will collect the sum of $553.00, that being 39½ cents on the $100.00 of same levied for county purposes for said year, and thereupon said clerk appeared in open court with said book and entered said assessment in said book in the name of said bank, together with the date, location, and number of shares of said stock and valuation as fixed above for each of said years, and it is further ordered that said Citizens national bank pay in addition to said taxes 20% upon each of said sums due said
32 county in each of said years as above stated as the penalty provided by law and the cost of these proceedings, and the clerk of this court will certify to the sheriff and enter upon his book the taxes to be collected by him as herein provided, to which foregoing order and judgment, and the rendition and entering of which, the aforesaid def't at the time excepts and still excepts.

On the same day of said term of said court, the following order was made in said action by the court, and duly entered of record:

Order Noting Filing Motion & Grounds for New Trial.

The def'ts herein, The Citizens National Bank, this day filed a motion and grounds in writing that the court vacate the judgment rendered herein and grant said def't a new trial, which being submitted to the court, the court upon consideration, overruled said motion, and refused to grant said def't a new trial, to which ruling of the court the def'ts except and prays an appeal to the Boyle circuit court, which is granted.

Said motion and grounds for a new trial above mentioned and referred to is in words and figures as follows:

Motion & Grounds for New Trial.

And now comes the Citizens National Bank, M. J. Farris,
33 president of the Cit. nat. bank, and J. A. Quisenberry, cashier of the Cit. nat. bank, the aforesaid def'ts in the above entitled action, and moves the court to set aside and vacate the decision, order, judgment, and assessment, made, rendered and entered herein by

said court and to grant these def'ts a new trial for the following reasons and upon the following grounds:

First. That said decision, order, judgment an- assessment are not sustained by the evidence.

Second. That said decision, order, judgment and assessment are contrary to law.

ROBERT T. QUISENBERRY,
Att'y for Defendants.

On the same day of said term of said court, the following order was made by the court and duly entered of record:

Order Tendering and Filing Bill of Exceptions.

This day came the def't The Citizens National Bank, by Att'y, and tendered and filed its bill of exceptions herein, which being examined by the court, was allowed by the court, and signed by the judge thereof, as the manner is, and is ordered to be made a part of the records of this case without being spread at large upon the order book.

Said bill of exceptions above mentioned and referred to is in words and figures as follows:

(For bill of exceptions see next page.)

34 *Bill of Exceptions.*

Boyle Circuit Court.

Bill of Exceptions.

THE COMMONWEALTH OF KENTUCKY, for the Use of BOYLE COUNTY,
Plaintiff,
vs.
THE CITIZENS NATIONAL BANK, Defendant.

Bill of Exceptions.

Be it remembered that at Danville, Ky., July 6th, 1901, that being the — day of the — term of the Boyle county court, came the parties in the above entitled action, and the law and facts being submitted to the court, the testimony offered and the proceedings had were as follows:

Mr. JOHN QUISENBERRY, called as a witness for the Commonwealth, being duly sworn, and examined by Mr. Robert Harding, attorney for plaintiff, testified as follows:

Testimony of Mr. John Quisenberry.

1. Mr.Quisenberry, what official position do you hold with the Citizens national bank?

A. I am cashier of the Citizens national bank.

35 Q. What was the capital stock of that bank for the year 1899?

A. $100,000.00.

Q. Divided into shares of how many dollars each.

A. $100.00 per share.

Q. What was the amount of surplus for the year 1899?

A. My recollection is that it was $30,000.00, but I would have to refer to the books to be absolutely sure. Thirty thousand dollars.

Q. What were the undivided profits and accumulations in 1899?

A. At what date?

Q. For the year 1899, the 15th of September?

A. Well, I couldn't tell unless I looked at the books.

Q. Will you please do so?

A. Yes, sir. The undivided profits were $11,802.50 on Sept. 15, 1899.

Q. What was the capital stock in 1898, on the 15th of Sept.?

A. I couldn't answer that without referring to the books.

Q. Will you please examine the books?

A. Yes, sir. Capital, $150,000.00 on Sept. 15th, 1898.

Q. What was the amount of surplus on Sept. 15th, 1898?

A. $30,000.00.

Q. What were the undivided profits and accumulations for the year 1898.

A. $7.40 on Sept. 15th, 1898.

Q. What was the capital stock in the year 1897?

A. $150,000.00.

Q. Please state the amount of surplus and undivided accumulation in 1897?

A. Surplus, Sept. 15th, 1897, $30,000.00. Undivided

36 profits, $1808.88.

Q. In 1896, what was the capital stock of the Citizens' national bank?

A. On July 1st, 1896, the capital stock was $150,000.00.

Q. What was the amount of undivided accumulation?

A. $3548.11.

Q. For the year 1895, what was the amount of the capital stock?

A. $150,000.00.

Q. What was the surplus?

A. $100,000.00.

Q. What was the undivided accumulations?

A. $2287.44.

Q. In 1894, what was the capital stock?

A. $150,000.00.

Q. What was the surplus?

A. $100,000.00.

Q. What was the undivided accumulation?

A. $3542.91.

Q. Do you know what the stock sold for per share in the year 1899?

A. No, sir, I have no recollection.
Q. In 1898, what did the stock sell for per share?
A. I do not remember, sir.
Q. In 1897?
A. I don't recollect.
Q. 1896?
A. I don't know.
37 Q. In 1895?
A. I don't know.
Q. Was that stock listed or assessed by you or the president of the bank for the taxes of 1899 due Boyle county?
A. Not that I recollect, sir.
Q. Were they listed by you or the president or the bank or the county assessor or anybody else for the taxes of 1898?
A. Not that I recollect, sir.
Q. In the year 1897, were those shares of stock listed by you or the president of the bank or the county assessor or anybody else for the taxes of 1897, due Boyle county?
A. Not that I recollect.
Q. How about the year 1896?
A. The same answer holds good.
Q. In 1895?
A. The same answer.
Q. In 1894?
A. Same answer.
Q. In stating the amount of surplus and undivided accumulations, does any real estate or fixtures of the bank enter into or make up any portion or amount of that surplus or undivided profits?
A. Yes, Sir, when we have it does.
Q. What real estate, and what was the value thereof, did your bank have, in 1899, '98, '97, '96, '95 and '94?
38 A.—

In 1899, amount carried on books	$7500.00
In 1898, " " " "	7500.00
In 1897, " " " "	15500.00
In 1896, " " " "	15500.00

A.—

In 1895, amount carried on books	15500.00
In 1894, " " " "	15500.00

Q. I believe you were assessed for the real estate separately for all those years?
A. Yes, sir.
Q. Please then furnish me with the amount of the assessment for those years of the real estate so that I can make the proper deductions on the value of this stock?
A. As far as I am able to ascertain, assessments were made as follows:

1899,	assessed.....	$4500	Tax paid.....	$45.00
1898,	"	11050	Tax paid.....	103.80
1897,	"	11650	Tax paid.....	92.05
1896,	"	9952	Tax paid.....	57.69
1895,	"	10510	Tax paid.....	63.20
1894,	"	10865	Tax paid.....	66.25

Q. I believe you paid the county tax in 1895 on these shares of stock, did you?

39 A. We paid one year, I don't know whether it was in 1893 or '94, we paid one year.

Q. Will you furnish me with a list of the stock holders and the residences of the stock holders of the shares of stock in the bank, in 1899, '98, '97, '96, '95 and '94?

A. Yes, sir, I will furnish it from a list made out July 1st.

Cross-examination by Mr. ROBERT T. QUISENBERRY, counsel for defense:

Q. The taxes which the Citizens national bank paid to the county, referred to in the direct examination, were the taxes paid upon the stock of the bank, or were they paid upon the franchise?

A. Upon the franchise, and certified to the State officials.

Q. You refer to the auditor?

A. Yes, sir.

Q. Has the Citizens national bank kept a list of its stock holders during all the years 1899, '98, '97, '96, '95 and '94, and is that list made out on the 1st of July of each year.

A. On the first Monday in July. It is required of the national bank that they have a list made out at that time.

Q. And this is the list to which you referred when you said in your direct examination that you would furnish a list of its stockholders?

A. Yes, sir.

Q. Has the stock of the Citizens national bank been owned

40 by residents of Boyle county, as nearly as you can recollect?

A. We have some non-resident stock holders, I think, which would come along through the entire period.

Q. Will that list which you have to furnish have the names not only of the stockholders, but also the names of the residence?

A. Yes, sir; that is what the law requires me to keep.

Q. That list during the years 1894, '95, '96, '97, '98, '99, did the authorities require to be kept at all times full and complete with the names and residence of the share holders in said bank, and the number of shares, subject to the inspection of all officers of law authorized to make amendments, creditors and stock holders during the business hours of each day in which business was legally transacted?

A. We kept the list during these years, open to inspection during the legal business hours.

Q. Did the assessor of Boyle county at any time during the years

1894, '95, '96, '97 '98 and '99, apply to the bank to inspect that list?

A. I have no recollection of their applying for the information.

Q. Did the assessor of Boyle county, during the year 1899, obtain a list of those stock holders from the citizens national bank?

41 A. He did apply for it, and received it.

Q. Did he apply for it in any other of those years named?

A. He did not.

Q. Did the Citizens national bank pay any taxes during the years 1894, '95, '96, '97, '98 and '99?

A. It did.

Q. Can you state that amount of taxes it paid and to whom?

A.—

In 1894, State Kentucky (Hewitt law) Frankfort, Ky...	$1029.01
" " sheriff Boyle Co., Ky. (real estate).....	66.25
" 1895, State Kentucky (Hewitt law) Frankfort, Ky...	1637.02
" " sheriff Boyle Co., Ky., (real estate).....	63.20
" 1896, State Kentucky (Hewitt Law) Frankfort, Ky..	1125.00
" " sheriff Boyle Co., Ky., (real estate).....	67.67
" 1897, State Kentucky, Frankfort, Ky.....	1276.95
" " sheriff Boyle county, Ky. (real estate).....	92.05
" 1898, State of Kentucky, Frankfort, Ky.....	986.50
" " sheriff Boyle county (real estate).....	103.80
" 1899, sheriff Boyle County (real estate).....	45.00

Stock holders listed stock and paid on their stock all other taxes assessed.

Q. Under whose demand did the Citizens national bank pay these taxes?

A. Under demands from the State. Except the taxes which
42 were paid on real estate, we paid that on demand from the county.

Q. Then during the years 1894, '95, '96, 97, and '98 and '99, did the county of Boyle make any demand on the Citizens national bank for any taxes at all?

A. None except for the real estate.

Q. At what rate of taxation was the taxes of the Citizens national bank paid to the State of Kentucky during the years 1894, '95, '96, '97, '98 and '99?

A. 1894, under the Hewitt law, 75 cents per share of capital and 45½ cents per $100 on surplus and undivided profits.

In 1895, under Hewitt law, 75 cents per share of capital and 45½ cents per $100 on surplus and undivided profits.

In 1896, under Hewitt law, 75 cents per share of capital and 45½ cents per $100 on surplus and undivided profits.

In 1897, under a new law, do not know rate now.

In 1898, " " " " " " " " "

In 1899, stock holders listed stock and paid thereon.

Q. How much per share did you pay during those years to the State, what amount on each share did you pay?

A. We paid at the rate the State demanded, at the rate prescribed by the Hewitt law part of the time.

Q. Please state to me in what years and on what date you paid under the Hewitt law?

A.—

1892, paid July 1st, 1892.

43 1893, paid July 1st, 1893.

1894, paid July 1st, 1894.

1895, paid July 1st, 1895.

1896, paid July 1st, 1896.

Q. Did the State authorities demand of the Citizens national bank that it pay taxes to the State under the Hewitt law in 1894, '95 and '96?

A. It did.

Q. Did the Citizens national bank for the years 1892, '93, '94, '95 and '96, on the 1st day of July in each of the aforesaid years, report to the auditor of the public accounts of the State of Kentucky, a true account of the capital stock, and the true account or certificate of the undivided profit and undivided accumulation, and how and in what said profits were invested, and pay into the treasury of the aforesaid State, the amount of taxes due thereon?

A. It did.

Q. Did the Citizens national bank by a proper corporate authority and with the consent of the majority in interest of the stock holders, at a call- meeting, give its consent to the levying of said taxes, and agree to pay same under the authority known as the Hewitt act, as herein provided?

A. It did.

Q. Will you file a copy of the record of that meeting or letter written to the auditor concerning it?

A. I will.

44 Copy of poll book of a meeting of the stock holders of the Citizens National Bank of Danville, held November 8th, 1898, to vote for the acceptance or rejection of the provision of the revenue law, passed at the last meeting of the General Assembly of Kentucky, as it relates to the taxation of banks and bank capital, to-wit:

Jno. J. Craig	74
Jno. J. Craig, trustee	40
Amanda G. Craig, by J. J. Craig, att'y	10
Alma Craig	10
Lettie Craig	10
Bettie Craig	10
M. J. Farris	50
T. A. Bradley	10
A. G. Whitley	20
W. B. Holmes	5
Jno. Fogarty, by W. B. Holmes, att'y	10
A. F. Cheek, by W. B. Holmes, att'y	34
C. P. Goodwin, ex't'x, W. B. Holmes, att'y	35
A. H. Meyer, by Holmes, att'y	5
T. G. Armstrong, by Holmes, att'y	15

C. T. Armstrong, by Holmes, att'y		10
J. J. Wood, by Holmes, att'y		10
R. G. Evans, by Holmes, att'y		40
M. D. Logan, by Holmes, att'y		10
Mrs. J. T. and C. T. Worthington, by Holmes, att'y		10
45 Amanda C. Fales, by Holmes, att'y		7
J. C. Fales, by Holmes, att'y		15
G. W. Chestnut, by Holmes, att'y		20
Nelson Wingate, by Holmes, att'y		10
A. F. Quisenberry, by Holmes, att'y		30
W. C. Wood, " " "		30
W. E. Sanders, " " "		3
Jacob Cozatt, " " "		20
Eugenia Whitley, by Holmes, att'y		10
Lucy Quisenberry, " " "		50
O. P. Cozatt, " " "		5
H. J. Cowan, " " "		10
Jno. Cowan, " " "		12
S. E. Bottom, " " "		15
Geo. Cowan, " " "		15
Sarah Cowan, " " "		15
William Berkley, " " "		10
Sanford Erwin, " " "		10
America Gentry, " " "		5
Jas. T. Cullom, " " "		10
R. T. Quisenberry, " " "		25
Jacob Harlan, trustee, by " " "		20
L. T. Harlan, " " "		10
W. B. Burke, " " "		10
46 R. B. Rice, by Holmes att'y		5
Jas. Kinnaird, " " "		7
J. A. Cheek		127
J. A. Quisenberry		87
Centre College of Kentucky, By J. A. Cheek, treasurer		20
Total shares		1011

All for acceptance—none against acceptance.

We, the undersigned judges, of this special election, held by the stock holders of the Citizens National Bank of Kentucky, at their banking house, this Nov. 8th, 1887, to accept or reject the provision of an act to amend the revenue laws of the Commonwealth of Kentucky, passed by the last meeting of the General Assembly of Kentucky, approved May, 17th, 1886, certify that the said election has been held in conformity with the requirements of said law, and that 1011 votes were cast for acceptance of the provisions of the law as it relates to the taxation of banks and bank capital, as is shown by the above poll book of said election.

T. A. BRADLEY,
A. G. WHITLEY,
JOHN MINOR,
Judges.

47 To the cashier of the Citizens national bank, Danville. Ky.
I certify the above is a true copy of the—above meeting.
J. A. QUISENBERRY, *Cashier.*

Q. Did the aforesaid bank furnish its consent to and with the authority of the State of Ky., and under the seal of the aforesaid bank to the governor of this Commonwealth?
A. It did.
Q. At what date?
A. My recollection is, that on November 8th, 1887, the same day of the stockholders' meeting. The letter is, I suppose, on file at Frankfort, and will show for itself the date.
Q. Did the State of Kentucky accept payment under this socalled Hewitt bill from the Citizens national bank?
A. It did.
Q. Has it ever refused a single time to accept payment from the Citizens national bank under the Hewitt bill?
A. Never.
Q. Has the Citizens national bank fully and faithfully complied with all the terms of the aforesaid Hewitt bill during the years '92, '93, '94, '95 and '96?
A. It has.

Redirect examination by Mr. HARDING:

48 Q. You paid the taxes for 1893?
A. Yes, sir.
Q. Please file also a list of the present stock holders of the bank for this year, for the first of July, 1901.

(Objected to by counsel for def't-, objection overruled, to which ruling of the court, def'ts by counsel excepted.)

It was also proven that the rate of taxation for county purposes in the aggregate for 1894, was 13½ cents, for '95, 14½ cents, for '96, 17½ cents, for '97, 18½ cents, for '98, 32½ cents, for '99, 39½ cents, on the $100. or taxable property in Boyle county, Kentucky.

And this is all the evidence offered by the plaintiffs either in chief or at all, and the def'ts offered no evidence, and this bill of exceptions contains and shows all the evidence offered by either party.

The court having been requested by the att'y for the def't- by motion in writing to separate its findings of facts and conclusions of law, did on Saturday, July 6th, 1901, being — day of the — term of said court, file and enter a document, which is in words and figures as follows:

49 "Boyle County Court.

COMMONWEALTH OF KENTUCKY, for, &c., Pl'ff,
vs.
CITIZENS NATIONAL BANK, &c., Def'ts.

Upon the pleadings and exhibits on file, and the proof heard, the court is of the opinion and so decides that the shares of stock in the

Citizens national bank is liable for taxation for county purposes, and has never been assessed or listed for taxation for county purposes for the year 1894, '95, '96, '97, '98 or '99, and it is now ordered that said shares of stock be listed and assessed and entered by the clerk of this court in a book kept by him for said purpose in the name of said bank for year 1894 *vs.* 1500 shares at the cash valuation of $242500, upon which the sheriff will collect the sum of $327.37, that being the 13½ cents on the $100 of same levied for county purposes for the said year, and for the year 1895, *vs.* 1500 shares of the cash value of $242900, upon which the sheriff will collect the sum of $352.20, that being 14½ cents on the $100 of same levied for county purposes for said year, and for the year 1896, *vs.* 1500 shares at the cash valuation of $243400, upon
50 which the sheriff will collect the sum of $415.95, that being 17½ cents on the $100 of same levied for county purposes for said year, and for the year 1897, *vs.* 1500 shares at the cash valuation of $243850 upon which the sheriff will collect the sum of $451.12 that being 18½ cents on the $100 of same levied for county purposes in said year, and for the year 1898, *vs.* 1500 shares at the cash valuation of $180000, upon which the sheriff will collect the sum of $585.00 that being 32½ cents on the $100 of same levied for county purposes for said year, and for year 1899 *vs.* 1000 shares at a valuation of $145.80 upon which the sheriff will collect the sum of $553.00 that being 39½ cents on the $100.00 of the same levied for county purposes for said year thereupon said clerk appeared in open court with said book and entered said assessment in said book in the venue of said bank together with the dates location and number of shares of said stock and valuation as fixed above for each of said years and it is further ordered that said Citizens national bank pay in addition to said taxes 20% per each of said sums due said county in each of said years as above stated, as the penalty provided by law and the costs of these proceedings, and the clerk of this court will certify to the sheriff and enter upon his book the taxes to be collected by him as herein provided," to which order and judgment, and rendition and entering of which the aforesaid def't- at the time excepted and still excepts.

51 Whereupon on the same day the said def'ts filed their motion and grounds for new trial in writing in said court, which are as follows:

Motion & Grounds for New Trial.

Boyle County Court.

COMMONWEALTH OF KENTUCKY, for Use and Benefit of BOYLE Co., THE COMMONWEALTH OF KY.

vs.

THE CITIZENS NATIONAL BANK, M. J. FARRIS, President of the Citizens National Bank; J. A. QUISENBERRY, Cashier of the Citizens National Bank.

And now comes the Citizens National Bank, and J. A. Quisenberry, cashier of the Citizens national bank, and M. J. Farris, cashier of the Citizens national bank, the aforesaid defendants, in the above entitled action, and moves the court to set aside and vacate the decision, order, judgment and assessment made, rendered and entered herein by said court, and to grant these defendants a new trial for the following reasons and upon the following grounds:

First. That said decision, order, judgment and assessment
52 are not sustained by the evidence.

Second. That said decision, order, judgment and assessment are contrary to law.

and moved the court to set aside and vacate its said decision, order, judgment and assessment herein, and to grant them a new trial which motion the court overruled, and refused to grant these defendants a new trial in this action, to which ruling of the court, these defendants at the time excepted, and still excepts, and prayed an appeal to the circuit court of Boyle county, Kentucky, which was granted.

Whereupon, this bill of exceptions was presented on the same day to the court for attestation and signature and it is hereby certified that this bill of exceptions contains and shows all the evidence offered by either party that this bill is true, and the same is certified as the manner is.

W. H. PREWITT,
Judge of the Boyle Co., Ky., Court.

Said bill of exceptions is endorsed on back in words and figures as follows:

Boyle Circuit Court. 1901, Sept. 2nd, filed in clerk's office. Att. R. G. Price, clerk.

A copy of the judgment, which is found on page 28 of this tran-
script, together with all of the papers, pleadings, exhibits and
53 bill of exceptions, and orders of the court, and all the proceedings had in the Boyle county court, was filed in the clerk's office of the Boyle circuit court on Aug. 31, 1901, and upon the filing of said judgment, etc., the clerk of said court issued a summons and three copies, supersedeas and three copies, a supersedeas bond having — executed, — clerk.

Said supersedeas bond is in words and figures as follows:

Supersedeas Bond.

THE CITIZENS NATIONAL BANK, DANVILLE, KENTUCKY, Appellant,
vs.
THE COMMONWEALTH OF KY., for Use and Benefit of BOYLE COUNTY, Appellee.

Upon an Appeal from a Judgment of the Boyle County Court, Rendered on the 6th Day of July, 1901.

Whereas, said appellant, The Citizens National Bank of Danville, Ky., has taken an appeal from the judgment of the Boyle county court, rendered on the 6th day of July, 1901, against said appellant, The Citizens National Bank, Danville, Ky., in favor of the said appellee, The Commonwealth of Ky., for the use and benefit of Boyle county, for the sum of $2684.64, and 20% penalty
54 and costs, and the appellant desires to supersede the said judgment above mentioned.

Now, we the Citizens National Bank of Danville, Ky., principal, and —— —— sureties, do hereby covenant to and with the appellees—all costs and penalties and damages that may be adjudged against the appellant on the appeal, and also that they will satisfy and perform the judgment above stated in case it shall be affirmed, or any judgment or order which the Boyle circuit court may render, or order to be rendered, by the inferior court, not exceeding in amount or value the judgment aforesaid.

Witness our hands this 7th day of July, 1901.

THE CITIZENS NATIONAL BANK
OF DANVILLE, KY.,
By M. J. FARRIS.
M. J. FARRIS.

Subscribed and acknowledged in my presence and taken and approved by me this 7th day of July, 1901.

J. B. NICHOLS,
Clerk Boyle County Court.

Said supersedeas bond is endorsed on back in words and figures as follows:

1901, July 7th, filed in clerk's office. J. B. Nichols, clerk.

55 On said supersedeas bond, the following supersedeas was issued:

Supersedeas.

I do certify that an appeal was granted by the above styled court on the 6th day of July, 1901, to the said Citizens National Bank, Danville, Ky., from a judgment obtained therein against it on the 6th day of July, 1901, by the Commonwealth of Kentucky, for the

use and benefit of Boyle county, for the sum of $2684.64, together with 20% penalty and costs, and that a bond to supersede said judgment has been executed before me.

Whereof, the Commonwealth of Kentucky, for the use and benefit of Boyle county, and all others, are commanded to stay proceedings on said judgment.

Witness my hand as clerk of the Boyle Co. court, this 6th day of July, 1901.

J. B. NICHOLS,
Clerk Boyle County Court, Ky.

Officer's return on said supersedeas is as follows:

Officer's Return on Supersedeas.

Executed by delivering a copy of the within to W. H. Prewitt, judge of the Boyle Co. Court.
56 This 13th day of July, 1901.

H. Z. COZATT, *Cor. B. C.*

On Jan. 22nd, 1902, that being Wednesday, the 3rd day of the regular Jan. term of the Boyle circuit court, the following order was made in said action by the court and duly entered of record:

Order Setting Trial in Circuit Court.

By agreement of parties, this case is set for trial on Thursday, Jan. 30th, 1902.

On April 22nd, 1902, that being Tuesday, the 2nd day of the regular April term of the Boyle circuit court, the following order was made by the court and duly entered of record:

Order Filing Demurrer to Answer.

The plaintiff, by att'y, this day filed a general demurrer to the 1, 2, 3, 4 and 5th paragraphs of the answer of the defendant, which being submitted to the court, the court for consideration took time.

Said demurrer above mentioned and referred to is in words
57 and figures as follows:

Demurrer to Answer.

The plaintiff, The Commonwealth of Kentucky, for the use and benefit of Boyle county, Ky., and the Commonwealth of Kentucky, comes and demurs to the 1, 2, 3, 4 and 5th paragraphs of the answer and response of the defendant herein, because the same taken to-

gether—separately do not state facts sufficient to constitute a defense herein.

Wherefore, etc.

ROBERT HARDING,
W. J. PRICE,
Att'ys.

Said demurrer is endorsed on back in words and figures as follows: 1902, April 22nd, filed in open court.

Att:
R. G. PRICE *Clerk.*

On Sept. 12th, 1902, that being Friday, the 5th day of the regular Sept. term of said court, the following order was made by the court and duly entered of record:

Order Overruling Demurrer of Def't to Jurisdiction of the County Court.

58 The court overruled said demurrer of the Citizens National Bank to the jurisdiction of the county court and to the mode of procedure by pl'ff in the county court, to which ruling of the court, def't excepts.

On April 25th, 1903, that being Saturday, the 6th day of the regular April term of the Boyle circuit court, the following order was made by the court and duly entered of record:

Order Submitting for Judgm't.

On motion of pl'ff by att'y it is ordered that this action be submitted to the court for its judgment.

On May 7th, 1903, that being Thursday, the 16th day of said term of said court, the following judgment was rendered by the court and duly entered of record:

Judgment.

The above styled action having been submitted to the court for its judgment upon the pleadings, exhibits and entire record herein, including the bill of exceptions, and the court being sufficiently advised, adjudges that this action and proceedings be, and the same is hereby, dismissed, and that the said The Citizens National
59 Bank of Danville, Ky., M. J. Farris, president, and J. A. Quisenberry, cashier, recover their costs herein expended, to all of which the Commonwealth of Kentucky for the use and benefit of Boyle county and the Commonwealth of Kentucky except and pray an appeal to the court of appeals, which is granted.

On May 11th, 1903, the following schedule for appeal was filed in the clerk's office of the Boyle circuit court, and is in words and figures as follows:

Schedule.

For the purpose of an appeal to the court of appeals, the clerk of the Boyle circuit court will make a true, full and complete transcript of the record and proceedings of the case mentioned in the caption as the same remains on file in his office.

ROBERT HARDING AND
W. J. PRICE,
Att'ys for Pl'ff.

Clerk's Certificate.

STATE OF KENTUCKY,
Boyle Circuit Court:

I, R. G. Price, clerk of the Boyle circuit court, do certify
60 that the foregoing 55 typewritten pages contain a full, true and complete transcript of the record and proceedings of this case mentioned in the caption as the same remains on file in my office.

Given under my hand as clerk aforesaid, this 27th day of June, 1903.

R. G. PRICE, *Clerk.*

Clerk'- Fee.

My fee for this transcript is $20.50.

R. G. PRICE, *Clerk.*

With the foregoing transcript the appellant filed a statement in the office of the clerk of the court of appeals in words and figures as follows, to-wit:

Statement.

Kentucky Court of Appeals.

COMMONWEALTH OF KENTUCKY, for the Use and Benefit of BOYLE COUNTY, Appellant,
vs.
THE CITIZENS NATIONAL BANK, &c., Appellees.

The judgment from which this appeal is taken will be
61 found upon page 55 of this transcript, and was rendered May 11th, 1903. No summons or warning order is desired.

ROB'T HARDING,
W. J. PRICE,
Att'ys for Appellant.

Filed Aug. 4, 1903.
S. J. SHACKELFORD, *C. C. A.*

Be it remembered that on the 30th day of October, 1903, in the court of appeals of Kentucky, at the capitol at Frankfort, the following order was entered, to-wit:

Boyle.

COMMONWEALTH, etc.,

—

CITIZENS NATIONAL BANK, etc.

Came appellants by counsel and on motion is granted twenty days' extension of time to file brief.

And afterwards on the 10th day of December, 1903, at a court of appeals at the capitol at Frankfort the following order was entered, to-wit:

62 Boyle.

COMMONWEALTH, etc.,
v.
CITIZENS NAT'L BANK, etc.

Ordered that this case be submitted.

And afterwards on the 15th day of April, 1904, at a court of appeals at the capitol at Frankfort the following judgment was entered, to-wit:

Appeal from Boyle Circuit Court.

COMMONWEALTH, Use, etc., Appellants,
vs.
CITIZENS NATIONAL BANK, Appellee.

The court being sufficiently advised, it seems to them that the judgment herein is erroneous.

It is therefore considered that said judgment be reversed and cause remanded for further proceedings not inconsistent with the opinion herein, which is ordered to be certified to said court.

(Whole court sitting. Judges Nunn and Paynter dissenting. Judge O'Rear dissenting from so much of the opinion as holds the act of 1900 valid.)

63 It is further considered that the appellants recover of the appellee its costs herein expended.

And on said date the court delivered the following opinion:

Court of Appeals of Kentucky.

APRIL, 15*th*, 1904.

(To be Reported.)

Appeal from Boyle Circuit Court.

COMMONWEALTH, Appellant,
vs.
CITIZENS NATIONAL BANK, Appellee.

Opinion of the Court by Judge Hobson.

This proceeding was instituted in the Boyle county court in the name of the Commonwealth by the sheriff of Boyle county to have the shares of stock of the Citizens' National Bank of Danville assessed for taxation for county purposes for the years 1892-1899 inclusive under section 4241, Ky. St. The bank, its president and its cashier were made defendants. Their demurrer to the jurisdiction of the court and to the capacity of the plaintiffs to maintain the action was overruled, also a general demurrer to the proceedings.
64 An answer was then filed, and the issues being made up, the court, after hearing the evidence, entered a judgment assessing the shares of stock as prayed. An appeal was taken to the circuit court, and there a judgment was rendered dismissing the proceeding, and the Commonwealth appeals.

The objection to the jurisdiction of the county court rests on the idea that section 4241 does not authorize the sheriff to have shares of bank stock which have been omitted listed for taxation. The section includes all omitted property. The objection to the jurisdiction of the county court was therefore not well taken; for while it was the duty of the assessor to make the assessment under the act of March 21, 1900, when he failed to do so the shares of stock were property omitted by the assessor within the meaning of section 4241.

The demurrer to the capacity of the plaintiff to maintain the proceeding was also properly overruled; for the proceeding was in the name of the Commonwealth and instituted by the sheriff who is authorized by section 4241 to institute it. The statement filed contains the necessary averments, distinctly showing that the property had been omitted by the assessor of Boyle county and the board of supervisors and had not been taxed for the years named. It is insisted, however, that the act of March 21, 1900, is in conflict with the national bank act of the United States and is to this extent void. The provisions of the national banking act relied on are as follows:

"The president and cashier of every national banking asso-
65 ciation shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the in-

spection of all the shareholders and creditors of said association and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, on the first Monday of July of each year, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency." (Section 5210, U. S. Revised Statutes.)

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to
66 exempt the real property of associations from either State, county or municipal taxes, to the same extent, according to its value, as other real property is taxed." (Section 5219.)

The act of March 21, 1900, is as follows:

"Whereas, the Supreme Court of the United States has lately decided that article three (3), chapter one hundred and three (103) of the acts of eighteen hundred and ninety-one, eighteen hundred and ninety-two and eighteen hundred and ninety-three is void and of no effect in so far as the same provides for the taxation of the franchise of national banks, in consequence of which decision there is not now and has not been since adoption of said article in eighteen hundred and ninety-two, any adequate mode of taxing national banks while state banks are now and have been ever since eighteen hundred and ninety-two, taxable for all purposes, State and local; therefore,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

"1. That the shares of stock in each national bank of this State, shall be subject to taxation for all State purposes and for the purposes of each county, city, town and taxing district in which the bank is located.

"2. For purposes of the taxation provided for by the next preceding section, it shall be the duty of the president and cashier of the bank to list the said shares of stock with the assessing officers authorized to assess real estate for taxation, and the bank shall
67 be and remain liable to the State, county, city, town and district for the taxes upon said shares of stock.

"3. When any of said shares of stock have not been listed for taxation for any of said purposes under levy or levies of any year or years since the adoption of the revenue law of eighteen hundred and ninety-two. It shall be the duty of the president and cashier to list the same for taxation under said levy or levies; Provided, that where

any national bank has heretofore, for any year or years, paid taxes upon its franchise as provided in article three (3) of the revenue law of eighteen hundred and ninety-two, said bank shall be excepted from the operation of this section as to said year or years; and provided further that where any national bank has heretofore, for any year or years, paid state taxes under the Hewitt bill in excess of the State taxes required by this act for the same year or years, said bank shall be entitled to credit by said excess upon its State taxes required by this act.

"4. All assessments of shares of stock contemplated by this act shall be entered upon the assessor's books, certified and reported by the assessing officers as assessments of real estate are entered, certified and reported, and the same shall be certified to the proper collecting officer for collection as assessments of real estate are certified for collection of taxes thereon.

"5. The assessments of said shares of stock and collection of taxes thereon, as contemplated by this act, may be enforced as assessments of real estate and collection of taxes thereon may be enforced.

68 "The purpose of this act is to place national banks of this State, with respect to taxation, upon the same footing as State banks as nearly as may be consistently with said article three (3) of the revenue law and said decision of the Supreme Court.

"Whereas, it is important that State banks and national banks should be taxed equally for all purposes, an emergency exists, and this act shall take effect and be in force from and after its passage."

It will be observed that by section 5210, U. S. Revised Statutes, the president and cashier of every national bank shall cause to be kept at all times a full and correct list of the shareholders in the bank, subject to the inspection of the officers authorized to assess taxes under State authority.

It will also be observed that by section 5219, the shares of stock in the bank may be included in the valuation of the personal property of the holder of the shares in assessing taxes imposed by authority of the State; and the legislature of each State may determine the manner and place of taxing the shares of the stock, subject to these two restrictions: 1. The taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State. 2. The shares of stock owned by non-residents of the State shall be taxed in the city or town where the bank is located, and not elsewhere. Real property of the

69 bank is subject to State, county or municipal taxes to the same extent according to its value as other real property is taxed. At the time the act of March 21, 1900, was passed the Supreme Court of the United States had in the case of Owensboro National Bank *v.* Owensboro, 173 U. S., 664, held the previous statute of Kentucky in conflict with the act of Congress, because by it the tax was levied on the franchise of the bank or its intangible property and not upon the shares of stock as the property of the shareholders. The act in question was passed to avoid the effect of this decision. It had been previously held by the Supreme Court in a number of well considered opinions that a State may levy a tax

on the shares of stock and require the bank to pay the tax. This was first held in National Bank *v.* Commonwealth, 9 Wallace, 353, which was followed in Bell's Gap Railroad *v.* Penn., 134 U. S., 232, Van Slyke *v.* Wisconsin, 154 U. S. 581, and Aberdeen Bank *v.* Chehalis County, 166 U. S., 440. The act of March 21, 1900, follows the rule approved in these cases in so far as it makes the bank the agent of the stockholder for the purpose of assessing the shares of stock and paying the taxes thereon for him. In assessing the shares of stock in the bank the assessing officer must be governed by the rule that it shall not be at a greater rate than is assessed upon other moneyed capital invested in State banks. (New York *v.* Tax Commissioners, 4 Wallace, 214; Aberdeen Bank *v.* Chehalis County, 166 U. S., 443.) The franchise of the bank, which is granted to it by the United States Government, is not subject to taxation.

70 Section 6 of the act of March 21, 1900, provides that the purpose of the act is to place national banks, with respect to taxation, upon the same footing as State banks, and one reason given for the emergency clause is that it is important that State banks and national banks should be taxed equally for all purposes. Under these provisions any exemption from taxation which would be allowed a State bank, or any deduction that would be made in favor of a State bank, must, under the act of 1900, be made in the assessment of the shares of stock of a national bank. In no respect may the moneyed capital invested in a national bank be taxed under the act at a higher rate than the moneyed capital invested in State banks, nor may any discrimination be made against the national bank.

Taxes levied by counties, cities, towns and taxing districts are imposed by authority of the State. Counties are but subdivisions of the State created for governmental purposes. They derive their authority from the State and can levy no taxes except such as the State authorizes them to levy. They levy taxes by authority of the State and the levies they make are as fully the act of the State as those made by the legislature itself. The only difference is that the legislature, under the power vested in it, instead of levying these taxes itself, authorizes local legislative bodies better adapted to understand the local necessities to make the levies as the local exigencies require.

71 This power of the legislature which is universally exercised is recognized in sections 157, 158, 159 and 180 of the constitution, and is in words conferred on the legislature by section 181:

"The General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may by general laws confer on the proper authorities thereof respectively the power to assess and collect such taxes."

Unquestionably the State in the distribution of the powers of the Government may commit to one body the power to levy certain taxes and to another the power to levy others; but when it does this all the taxes so levied are levied by the authority of the State.

It was held under the previous statute that the shares of stock in national banks might be assessed to the share-holder by the assessor and should be given in by the share-holder in the list of his personal

property. (Scobee *v.* Bean, 109 Ky., 526.) The act of March 21, 1900, did not therefore make that taxable which was not taxable before, but simply provided another mode for the assessment of the shares of stock and the payment of the taxes. It was the duty of the assessor to make the assessment. It was also the duty of the president and cashier of the bank to list the shares of stock with the assessor; but when the assessment was not made, the property was simply omitted from the tax list and the sheriff is authorized by section 4241, Ky. St., to institute the proceeding to have any
72 omitted property assessed. A penalty may be properly imposed in the proceeding because the property was not listed with the assessor as required by law and stood as any other property for the assessment of which a proceeding under section 4241 may be instituted. While neither the bank nor its president nor its cashier is the owner of the shares of stock, the bank is made by the act the agent of the share-holders and the notice to it is notice to his agent within the meaning of section 4241. The president and cashier were properly made defendants because it is made their duty by the statute to list the stock. The bank is required to keep a list of its share-holders, and therefore knows who they are. Notice to the agent in an assessment of property is sufficient notice to his principal whom he represents. Certainly the agent cannot raise the question of the want of notice to his principal or maintain that the proceeding is in violation of the fourteenth amendment to the Constitution of the United States. Nor can it raise the question that peradventure some of the shares may have changed hands. These defenses can only be made by the share-holders, and do not properly arise in this case.

Limitation was not pleaded as to the retrospective assessments, but we have held in several cases that retrospective assessments were barred after five years from the time the property should have been assessed. The shares in the bank, as held in Scobee *v.* Bean, might have been assessed every year in the name of the shareholders.
73 The act of 1900 created no new right; it simply gave a new remedy. The statute began running when the property might have been assessed, and the right to make the assessment after five years is barred. On the return of the case the defendants will be allowed to amend their answer and set up limitation if they desire to do so.

Judgment reversed and cause remanded for further proceedings consistent herewith.

Whole court sitting.

Judge Paynter and Judge Nunn dissent.

Judge O'Rear dissents from so much of the opinion as holds the act of 1900 valid.

Afterwards on the 6th day of May, 1904, at a court of appeals at the capitol at Frankfort, the following order was entered:

Boyle.

COMMONWEALTH, etc.,
v.
CITIZENS NATIONAL BANK.

Came appellee by counsel and on motion is given an extension of time until June 10th, 1904, to file a petition for rehearing.

74 And afterwards on the 12th day of May, 1904, at a court of appeals held at the capitol at Frankfort, the following order was entered:

Boyle.

COMMONWEALTH, etc.,
v.
CITIZENS NATIONAL BANK.

Came appellees by counsel and on its motion the order heretofore entered granting it an extension of time until June 10th, 1904, to file petition for rehearing be and the same is hereby set aside.

75 Pleas before the Honorable The Court of Appeals of the Commonwealth of Kentucky, at the Capitol, at Frankfort, on the 27th day of February, A. D. 1908.

THE CITIZENS NATIONAL BANK, etc., Appellants,
vs.
COMMONWEALTH, for Use and Benefit, etc., Appellees.

Appeal from Boyle Circuit Court.

Be it remembered that on the 23rd day of August 1907, the appellants by their attorney filed in the office of the Clerk of the Court of Appeals a transcript of the record herein, and which is in words and figures as follows, to-wit:

STATE OF KENTUCKY:
Boyle Circuit Court:

Pleas before Hon. M. C. Saufley, Judge of the Boyle Circuit Court, had at the Court house thereof, in Danville, Boyle county, Kentucky, on the — day of ——, 1903, in the following styled action, viz:

Caption.

Statement.

COMMONWEALTH OF KENTUCKY, for the Use and Benefit of BOYLE COUNTY, and the COMMONWEALTH OF KENTUCKY, Plaintiff-,

vs.

THE CITIZENS NAT'L BANK, M. J. FARRIS, President of the Citizens Nat'l Bank; J. A. QUISENBERRY, Cashier of Citizens Nat'l Bank, Defendants.

76 Statement.

The undersigned sheriff of Boyle County states that the Citizens National Bank of Danville, Ky., is a bank incorporation located and doing business in Danville, Boyle County, Ky., prior to and ever since the year 1892, and that the capital stock of said bank consists of fifteen hundred shares of $100.00 each during the years 1892, 1894, 1895, 1896 and 1897 of said time, and that each of said shares of stock during the years 1892, 1894, 1895, 1896 and 1897 was of the value of $170.00 per share, and the capital stock of 1,000 shares in 1898 and 1899, of the value of $160.00 per share, and that the president and cashier of said bank and said bank have failed to list said shares of stock in the name of the stockholders of said bank, or otherwise, for any said years for county taxes, for the County of Boyle, or any other taxes, for any of said years, and that said bank has paid no taxes thereon for Boyle county for any of said years, and that each and all of said shares of said stock have been omitted to be assessed by the assessor of Boyle county and the board of supervisors of Boyle county for taxation for each and all of said years, and said shares of stock are held and owned by persons in Boyle county, and are liable for taxation for county purposes, for said county and said bank has knowledge of the names of each and all of the owners and holders of said stock; and that the value of said shares of stock in the aggregate during each of the said years 1892-94-95-96 and '97 was and is $205,000, and in the years 1898 and 1899, was $160,000,

77 and the undersigned sheriff of Boyle county proposes in this statement to have said shares of stock listed and assessed for county taxes due Boyle county for each and all of said years 1892, 1894, 1895, 1896 and 1897, aforesaid, at $205,000 per year, and for the years 1898 and 1899, $160,000 per year by the Boyle county court, and he files this statement with the clerk of the Boyle county court to have said court assessed stock and affix the penalty prescribed by law for the failure of said bank and its president and

cashier to list same as required by law, and ask that a summons be issued hereon against said bank and its president and cashier as required by law.

This fifteenth day of March, 1901.

G. W. COULTER,
Sheriff of B. C.

Said statement is endorsed on the back in words and figures as follows:

1901, March 15th, filed in clerk's office by G. W. Coulter, sheriff, and summons and three copies issued.

J. B. NICHOLS, *Clerk.*

Said summons above mentioned and referred to is in words and figures as follows:

Summons.

Commonwealth of Kentucky to the Sheriff of Boyle County, Greeting:

78 You are commanded to summon the Citizens national bank, M. J. Farris, president of the Citizens national bank and J. A. Quisenberry, cashier of the Citizens national bank to answer on the first day of next April term of the Boyle county court a statement in writing filed in the office of the clerk of the Boyle county court by G. W. Coulter, sheriff of Boyle county, proposing to have said court list and assess the taxation for county purposes for the years 1892, 1894, 1895, 1896, 1897, 1898 and 1899, the shares of stock in said bank, which said shares of stock said cashier and president and bank failed to list for taxation for said time, and which shares of stock were omitted by the assessor of Boyle county and the board of supervisors of Boyle county to be listed or assessed for said time, and to affix the penalty provided by law for the failure to list same, and warn them that upon their failure to answer the statement will be taken for confessed, or they will be proceeded against for contempt.

And you will make due return of this summons on the 1st day of the next April term of this court.

Given under my hand as clerk of said court, this 15th day of March, 1901.

J. B. NICHOLS, *Clerk.*

Officer's Return.

Executed on the Citizens National Bank in Danville, Kentucky, by delivering to M. J. Farris, president of said Bank, a copy
79 of the within summons.

Executed on M. J. Farris, President, and J. A. Quisenberry, Cashier, of said Citizens Bank, by delivering to each of them a copy of the within summons, this 16th day of March, 1901.

G. W. COULTER,
Sheriff of B. C.

On the 17th day of June, 1901, that being the first day of the regular June term of said court, the following order was made and duly entered of record:

Order Filing — Overruling Demurrer to Statement.

The def't by att'y this day filed a general demurrer to the statement of the plaintiff, which being submitted to the court, the court upon consideration overruled said demurrer.

On the same day of said term of said court, the following order was made by the court and duly entered of record:

Order Filing and Overruling Special Demurrer to Statement.

Thereupon the defendant also filed a special demurrer to said statement of plaintiff, which being submitted to the court, the court upon consideration overruled said special demurrer, to which ruling — the court on both general and special demurrers, the defendant excepts.

80 Said general demurrer above mentioned and referred to, is in words and figures as follows:

General Demurrer to Statement.

The aforesaid defendants, The Citizens National Bank, M. J. Farris, President of the Citizens National Bank, and J. A. Quisenberry, cashier of the Citizens National Bank, say that the plaintiff's statement or petition does not state facts sufficient to constitute a cause of action against them.

ROBERT T. QUISENBERRY,
Att'y of the Aforesaid Def'ts.

Said demurrer is endorsed on back in words and figures as follows: Filed April 15th, 1901.

J. B. NICHOLS, *Clerk.*

Said special demurrer above mentioned and referred to is in words and figures as follows:

Special Demurrer to Statement.

The defendants, The Citizens National Bank, M. J. Farris, President of the Citizens National Bank, and J. A. Quisenberry, Cashier of the Citizens National Bank, demur to the plaintiff's petition or statement because it shows that this court has no jurisdiction of the subject of the plaintiff's action, and because it shows that the plaintiff has no legal capacity to maintain this action.

ROBERT T. QUISENBERRY,
Attorney for the Citizens National Bank,
M. J. FARRIS,
President of the Citizens National Bank, and
81 J. A. QUISENBERRY,
Cashier of the Citizens National Bank,
the Aforesaid Defendant.

Said demurrer is endorsed on back in words and figures as follows: Filed April 15th, 1901,

J. B. NICHOLS, *Clerk.*

On July 1st, 1901, that being Monday morning, the following order was made in said action by the court, and duly entered of record:

Order Noting Filing of Answer.

The defendants herein this day filed their answer.

Answer and Response to Statement.

The aforesaid Defendants, the Citizens National Bank, M. J. Farris, President of the Citizens National Bank, and J. A. Quisenberry, Cashier of Citizens National Bank, for their answer to the statement filed herein in the above entitled action, admit that the capital stock of the Citizens National Bank was evidenced by fifteen hundred shares of the par value of one hundred dollars each, during the years 1892-94-95-96 and 1897, but they distinctly deny that each of said shares of stock during the years 1892-1894-1895-1896 and 1897, was of the value of one hundred and seventy dollars per share; and they admit that the capital stock of said Bank was evidenced
82 by one thousand shares of the par value of one hundred dollars each, during the years 1898 and 1899, but they distinctly deny that each of said shares of stock during the years 1898 and 1899 was of the value of one hundred and sixty dollars per share; and they deny that said Bank has failed to list said shares of stock in the name of the stock holders, or of the Bank or otherwise for any of said years for County taxes for the county of Boyle or any other taxes, for any of said years; and they deny that said shares of stock are held and owned exclusively by persons in Boyle County, and deny that any of said shares of stock, "are liable for taxation for County purposes for said County," and they deny "that the value of said shares of stock in the aggregate, or otherwise, during each of said years 1892-1894-1895-1896 and 1897, was $205,000.00, and in the years 1898 and 1899 was $160.000.00.

The aforesaid Defendants allege that the President and Cashier of The Citizens National Bank aforesaid, have caused to be kept at all time- a full and correct list of the names and residences of all the shareholders in said Bank, and the number of shares held by each, in the office where its business is transacted, subject to the inspection of all shareholders, and creditors of the Bank, and the officers authorized to assess taxes under State authority, during business hours of each day in which business was legally transacted, and they allege that at no time during the existence of said Bank has any officer authorized to assess taxes under State authority of the State of Kentucky exercised his right to inspect said list, save and except the Assessor of Boyle County, Ky., who inspected said list during
83 the fall of the year 1899, and also during the fall of 1900.

Paragraph 2.

The aforesaid Defendants further answering the aforesaid Statement, allege that by Article 2, of Chapter 92, of "The General Statutes of Kentucky," commonly known as the Hewitt Law, it was provided "That shares of stock in State and National Banks and other institutions of loan or discount, and of all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations, or societies, and said Banks, institutions, and corporations shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, state, county and municipal," and also that "The Cashier of a Bank and the Treasurer of any other institution, or corporation whose stock is taxed, shall, on the first day of July in each year report to the Auditor of Public Accounts the true amount of the Capital stock, the true amount of surplus, undivided profits, or undivided accumulations, and how or in what said surplus, undivided profits, or undivided accumulations is invested, and pay into the Treasury the amount of the tax
84 due." If such tax be not paid the cashier and his sureties shall be liable for the same and twenty per cent., upon the amount, and any state Bank, institution, or corporation shall thereby forfeit the privilege of its charter," and the aforesaid Defendants further allege that it was also provided by the aforesaid article (2) two of Chapter 92, of the General Statutes of Kentucky, "That each of said Banks, Institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof, may give its consent to the levying of said tax and agree to pay the same as herein provided, and waive and release all rights under the acts of Congress or under the Charters of the State Banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such Bank and delivered to the Governor of this commonwealth; and upon such agreement and consent being delivered, and in consideration thereof such Bank and its shares of stock shall be exempt from all taxation whatsoever, so long as said tax shall be paid during the corporate existence of said Bank.

The aforesaid Defendants further allege that the Citizens National Bank, one of the above defendants, did by its proper corporate authority with the consent of a majority in interest of a quorum of its stock holders at a called meeting thereof, held on the 8th day of November 1887, for that purpose, give its consent to the levying of said tax, and agreed to pay the same as herein above set
85 out, and agreed to waive and release all rights under the acts of Congress to a different mode or smaller rate of taxation, which consent and agreement to and with the State of Kentucky was evidenced by writing under the seal of the aforesaid Bank,

and delivered on or about November 8th, 1887, to the Governor of the Commonwealth of Kentucky.

The aforesaid Defendants further allege that the Cashier of The Citizens National Bank, one of the aforesaid Defendants herein, did on the first day of July 1892-1893-1894-1895-1896, report to the Auditor of Public Accounts of Kentucky the true amount of the Capital stock, the true amount of surplus, the undivided surplus, and undivided accumulations, and how, or in what said surplus, undivided profits, and undivided accumulations of the said The Citizens National Bank were invested, and the said Bank did on July 1st, 1892-1893-1894-1895 and 1896 pay into the Treasury of the State of Kentucky the whole amount of tax due thereon, in accordance with the terms and provisions of Article 2, of Chapter 92 of The General Statutes of Kentucky, which the Court of Appeals of Kentucky by an opinion filed June 1st, 1895, in the case of Commonwealth, for use &c. *vs.* Farmers Bank of Ky. &c. (Ky. Law Reporter 465) 97 Ky. 590, declared was the law, and "in full force and the Banks must be taxed under its provisions".

These Defendants allege that by virtue of the aforesaid opinion and decision of the Court of Appeals of Kentucky, Article 2
86 of Chapter 92 of the General Statutes of Kentucky continued to be, and was the law which governed, controlled, regulated and provided for the taxation of all Banks which accepted its provisions and paid taxes thereunder, until March 24th, 1897, on which date the aforesaid opinion and decision of the Court of Appeals of Kentucky was over-ruled and reversed by said Court by its opinion and decision in the case of The Deposit Bank of Owensboro *vs.* Davies County. (19 Ky. L. R. 248).

These Defendants allege that the said Defendant The Citizens National Bank, was compelled to obey the laws of the Commonwealth of Kentucky, as the same were declared unto it by the Court of Appeals of Kentucky, and they state that said bank did fully, faithfully, and promptly obey and follow the law as so declared to it by said Court during the years 1892-1893-1894-1895 and 1896, and did make report of its property and list the same for said years on the first day of July of each of the aforesaid years with the auditor of Public Accounts for the purposes of taxation, and did pay the taxes assessed thereon in full in accordance with the provisions of said Article 2 of said Chapter 92 of The General Statutes of Kentucky, which payments the State of Kentucky demanded and accepted at the time, and still retains, and which demand upon the part of the State said Bank was compelled to obey, or otherwise place itself in the attitude of defying the law of the State of Kentucky, and thereby subjecting its property and its effects to the risk of being seized and sold by the officers of the law for said taxes, to the irreparable
87 injury to the business of said Bank, all of which acts upon the part of said The Citizens National Bank, these Defendants plead and offer in full defense against the proceedings set up against them by the Statement in the above entitled action, and as a full and complete defense against any and all proceedings against said Bank, or its President and Cashier, for the purpose of either as-

sessing, levying, or collecting either a tax or penalties upon either the property of said bank, or the shares of stock therein for the years 1892-1893-1894-1895 and 1896.

Paragraph 3.

The aforesaid Defendants allege that the Act of the Kentucky Legislature entitled "An Act relating to Revenue and Taxation, and upon which the aforesaid Statement is based and filed, and these proceedings commenced, became a law November 11th, 1892, and that in accordance with its provisions the first collection and payment of taxes made thereunder was made in 1893; which facts these Defendants plead as an additional defense against, and as a bar to all attempts herein made or otherwise to assess and collect taxes or penalties under said law from these defendants or either of them for the year 1892. These defendants further allege that the aforesaid Act relating to Revenue and Taxation does not determine and direct the manner and place of taxing shares of National Banking Associations located within the State, neither does it direct that said shares shall be taxed at all, but in case a contrary interpretation should be placed upon said Act by the Courts, these Defend-
88 ants allege that the Rights and Powers set forth in the aforesaid statement to assess the stock of the aforesaid Bank, affix penalties thereon for failure to list the same for taxation, and to collect the same taxes thereon for the years 1892-1893-1894-1895 and 1896 did not accrue within Five Years next preceding the day on which the aforesaid Statement was filed, before the aforesaid Court, and this action was commenced, which facts these Defendants plead and relv upon in bar to all attempts to assess the stock of said Bank and to affix penalties thereon for failure to list the same for taxation, and to colect the same and taxes thereon for the aforesaid years 1892-1893-1894-1895 and 1896.

Paragraph 4.

These Defendants allege that by an Act entitled "An Act relating *the* the taxation of the Shares of stock in National Banks, approved March 21st, 1900, it was enacted by the General Assembly of the Commonwealth of Kentucky.

1. That the shares of stock in each national bank of this State shall be subject to taxation for all State purposes, and shall be subject to taxation for the purposes of each county, city, town, and taxing district in which the bank is located.

2. For purposes of the taxation provided for by the next preceding section, it shall be the duty of the President and the
89 Cashier of the bank to list the said shares of stock with the assessing officers authorized to assess real estate for taxation, and the bank shall be and remain liable to the State, County, City, town and district for the taxes upon said stock.

3. When any of said shares of stock have not been listed for taxation for any of said purposes under levy or levies of any year or years since the adoption of the revenue law of eighteen hundred and

ninety-two, it shall be the duty of the President and Cashier to list the same for taxation under said levy or levies; Provided, That where any national bank has heretofore for any year or years, paid taxes upon its franchise as provided in Article three (3) of the revenue law of eighteen hundred and ninety-two, said bank shall be excepted from the operation of this section as to said year or years: And provided further, That where any national bank has heretofore for any year or years paid State taxes under the Hewitt bill in excess of the State taxes required by this act for the same year or years, said bank shall be entitled to credit by said excess upon its State taxes required by this Act.

4. All assessments of shares of stock contemplated by this Act shall be entered upon the assessor's books, certified and reported by the assessing officers as assessments of real estate are entered,
90 certified and reported, and the same shall be certified to the proper collecting officers for collection as assessments of real estate are certified for collection of taxes thereon

5. The assessments of said shares of stock and collection of taxes thereon as contemplated by this act, may be enforced as assessments of real estate and collection of taxes thereon may be enforced.

6. The purpose of this act is to place national banks of this State, with respect to taxation, upon the same footing as State Banks as nearly as may be consistently with said article three (3) of the revenue law and said decision of the Supreme Court.

7. Whereas, it is important that State Banks and national banks should be taxed equally for all purposes, an emergency exists, and this act shall take effect and be in force from and after its passage."

All of which aforesaid provisions of the aforesaid Act, and the whole of the aforesaid Act, these Defendants aver and charge are in contravention of the Constitution and Laws of the United States, and in conflict therewith and therefore void; and further that the proceedings authorized by the aforesaid Act, when placed in motion, together with the Act itself operate to deprive the owners of shares of stock in National Banks in the State of Kentucky of their property therein without due process of law, and for which addi-
91 tional reason the said Act is void.

Paragraph 5.

These Defendants allege that the aforesaid Article 2 of Chapter 92 of the General Statutes of Kentucky commonly known as the Hewitt Law, continued until March 24th, 1897, to be the law regulating the taxation of all those National Banks which accepted its terms as therein provided, and that the aforesaid The Citizens National Bank having so accepted said Article 2, and having fully and faithfully complied with its terms up to March 24th, 1897 is thereby exonerated and excused from having either the taxes or the penalties imposed upon the shares thereof which are sought to be laid thereupon by these proceedings, and the filing of the aforesaid statement, and these Defendants further allege that the General Assembly of the Commonwealth of Kentucky has since January 1st, 1892 enacted

no valid law directing the manner and place of taxing shares of stock in National Banking Associations, or directing that said shares be taxed at all, and these Defendants allege that the said The Citizens National Bank obey- all laws in the State of Kentucky regulating the taxation of its shares of stock by keeping the list of its stock holders open for inspection as set forth in paragraph one of this Answer, and that said bank is not to be adjudged delinquent in any duty pertaining to the taxation of its shares of stock on account of the failure
of the officers authorized to assess taxes under the authority
92 of the State of Kentucky, to do their duty by inspecting said lists, and taxing the owners and holders of said shares, and including the same in the valuation of the personal property of the said owners or holders of such shares in assessing taxes imposed by authority of the State of Kentucky, and having fully answered,

Wherefore these Defendants the said The Citizens National Bank, M. J. Farris, and J. A. Quisenberry pray that it be adjudged that they have fully answered and responded to the aforesaid statement, and that all the demands of the said Statement be denied; that the same be dismissed; and that the said Commonwealth of Kentucky for the use and benefit of Boyle County, and The Commonwealth of Kentucky, take nothing, and that neither tax or penalties be imposed upon the shares of the aforesaid bank, and that all the aforesaid Defendants be discharged and saved harmless and be awarded their costs here, together with all relief to which they may appear to be entitled.

THE CITIZENS NATIONAL BANK,
M. J. FARRIS,
President of The Citizens National Bank,
J. A. QUISENBERRY,
Cashier Citizens National Bank,
By ROB'T QUISENBERRY,
Their Attorney.

Said answer and response is endorsed on back in words and figures as follows:

1901, July 1st, filed in clerk's office. J. B. Nichols, Clerk.

93 On July 5th, 1901, the following order was made in said action by the court, and duly entered of record:

Order Noting Filing of Reply to the Answer and Response of Defendant.

The plaintiff, by attorney, this day filed herein their reply to the first paragraph to the answer of the defendant.

Said reply above mentioned and referred to is in words and figures as follows:

Reply to Answer of Defendants.

Plaintiffs for reply to the 1st paragraph of answer, state that they have no knowledge or information sufficient to form a belief that the president or cashier of The Citizens National Bank have caused

to be kept at all times or at all a full and correct list of the names or residences of all or any of the share holders in said bank or the number of shares held by each in the office where its business is transacted subject to the inspection of all share holders or creditors of the bank or officers authorized to assess taxes under State authority during the business hours of each day in which business was legally transacted, and deny that at no time during the existence of said bank has any officer authorized to assess taxes under State authority of the State of Kentucky exercised his right to inspect said list, and plaintiffs aver that they have no knowledge or information sufficient to form a belief that the assessor of Boyle County,
94 Kentucky, inspected said list during the fall of the year 1899, or during the fall of the year 1900, and if said assessor did inspect said list, in the fall of 1900, it was the duty of the President and the Cashier of said bank to list and assess with said assessor the shares of stock in said bank for the years, 1893, '94, '95, '96, '97, '98, '99, as at said time in the fall of 1900.

Defendants did list with said assessor the shares of stock in said bank under the act of 1900 for taxes due Boyle County for the year 1901.

Paragraph 2.

For reply to the second paragraph of the answer, plaintiffs say they have no knowledge or information sufficient to form a belief that the defendant bank did by its proper corporate authority with the consent of a majority in interest of a quorum of its stock holders at a call meeting thereof held, on the 8th day of November 1897, for that purpose, give its consent for the levying of the said tax or agree to pay same or agree to waive or release all rights under the acts of Congress or to a different mode or a smaller rate of taxation or that said consent or agreement to and with the State of Kentucky was evidenced by writing under the seal of the aforesaid bank or delivered on or about November 8th, 1887, or that the Cashier of The Citizens National Bank on the 1st day of July, 1893,
95 92, 94, 95, 96, reported to the Auditor of the State of the Public Accounts the true amount of the Capital stock or the true amount of surplus, or undivided surplus or undivided accumulation or how or in what said surplus or undivided profits or undivided accumulations of said bank were invested, or that said bank did on July 1st, 1892, '93, '94, '95, '96, pay into the treasury of the State of Kentucky, the whole amount of taxes due thereon in accordance with the terms and provisions of Article 2, Chapter 92, of the General Statutes of Kentucky, and deny that the Court of Appeals of Kentucky by an opinion filed June 1st, 1895, in the case of the Commonwealth for the use and benefit, etc., *vs.* Farmers Bank, etc., 97th Ky., 590, declared that Article 2, of Chapter 92 of General Statutes of Kentucky was the law or in full force or that the banks must be taxed under it.

Plaintiffs aver that said opinions in said cases affirm said cases upon a divided court, three of the judges out of the seven dissenting from said opinion, and deny that by virtue of the aforesaid opinion or decision in the Court of Appeals in Kentucky, article 2 of chapter

92, of the General Statutes of Kentucky, continued to be or was the law which governed or controlled or regulated or provided for the taxation of all banks which accepted its provision or paid taxes thereunder until March 24th, 1897.

Plaintiffs deny that said bank was compelled to obey the laws of the Commonwealth of Kentucky, as the same were declared under it by the Court of Appeals of Kentucky, and deny that said Bank did fully or faithfully or promptly or at all obey or follow the law
96 as so declared to it by the said court during the years 1892, '93, '94, '95, '96, or did make report of its property or list of same for said years on first day of July on each of the aforesaid years or at any other time with the Auditor of Public Accounts or did pay the taxes assessed thereon in full in accordance with the provisions of said Article 2, of the said Chapter 92, of the General Statutes of Kentucky, or that the State of Kentucky, demanded or accepted such payments at the time or still retained them and deny that the said bank was compelled to obey or otherwise place itself in the attitude of defying the laws of the State of Kentucky or thereby subjecting its property to the risk of being seized or sold by the officers of the law for said taxes or to the irreparable injury of said business of said bank and deny that there was any demand on the part of the State that said bank should list or pay said taxes under said act and article 2 of chapter 92 of General Statutes of Kentucky said article and act were repealed by an act of the General Assembly of the Commonwealth of Kentucky, approved on — day of —— 1892, and was never in force thereafter and of said act said bank had full knowledge and notice.

For reply to the 3rd paragraph of answer of Defendants, plaintiffs deny that the rights and powers set forth in the aforesaid statement to assess the stock of the aforesaid banks affix- thereon for failure to list the same for taxation and to collect the same and taxes thereon for the years 1892, '93, '94, '95, '96, did not accrue within five years next preceding the day on which the aforesaid state-
97 ment was filed before the aforesaid court and this action was commenced.

Par. 4. Plaintiffs for a reply to the 4th paragraph to the defendants' answer, deny that all of which aforesaid provisions of the aforesaid act or the whole or any of the aforesaid act are in contravention of the Constitution or laws of the United States or in conflict therewith or void or that the proceedings authorized by the aforesaid act when placed in motion together with the act itself operate to deprive the owners of shares of stock in National banks in the State of Kentucky of their property therein without due process of law or for that reason or for any other reason said act is void and said act "in motion" dispels the illusion of the defendant that it can any longer escape the payment of municipal, county and district taxes for the protection it received under the law.

Par. 5. For the answer to the 5th paragraph of defendants' answer plaintiffs deny that Article 2 of Chapter 92, General Statutes of Kentucky commonly known as the Hewitt law continued until March 24th, 1897, to be the regulating law of the taxation of all

those National Banks which accepted its terms as therein provided and denies that the Citizens National Bank accepted said Article 2, or fully or faithfully or at all complied with its terms from 1892 to March 4th 1897, or at any other time between said date and denies that it is thereby or at all exonerated or excused from having either the taxes or the penalties imposed upon the shares thereof by the proceedings herein and deny that the General Assembly of
98 the Commonwealth of Kentucky has since January 1st, 1892, enacted no valid law directing the manner or place—taxing shares of stock in National Banking Associations or directing that said shares be taxed at all and denies that these defendants obey all laws in the State of Kentucky, regulating the taxation of its shares of stock by keeping a list of its stockholders open for inspection as set forth in paragraph 1, of their answer; and deny that said bank is not to be judged delinquent in any duty pertaining to the taxation of its shares of stock on account of the failure of the officers authorized to assess taxes under the authority of the State of Kentucky to do their duty by inspecting said list or taxing the owners or holders of said shares and including the same in the valuation of the personal property of the owners or holders of such shares in possessing taxes imposed by authority in the State of Kentucky.

Wherefore, plaintiff prays for the assessment and the affixing of penalties asked of said shares of stock in said bank as asked in the statement herein and for all proper relief.

ROBERT HARDING,
Attorney for Plaintiff.

Said reply is endorsed on back in words and figures as follows: 1901, July 5, filed in clerk's office. J. B. Nichols, Clerk.

99 On the same day of said term of said court, the following order was made in said action by the court and duly entered of action.

Order Noting Filing of Rejoinder.

The defendant by attorney this day filed herein, their rejoinder to the reply of plaintiff.

Rejoinder to Reply of Plaintiff.

The aforesaid defendants, The Citizens National Bank, M. J. Farris, President of The Citizens National Bank, and J. A. Quisenberry, Cashier of The Citizens National Bank, for their rejoinder to the reply filed herein in the above entitled action, deny that it was, or is, the duty of the Cashier and President of the said The Citizens National Bank, to list and assess with the assessor of Boyle County, Kentucky, or any other assessor or officer whatever the shares of stock in the aforesaid bank, either for the years 1893, '94, '95, '96, '97, '98 and '99, or for any year or years, or time or period of time whatever, and the defendants deny that said President and Cashier

did list with said assessor or any other officer whatever the shares of stock in said bank for taxes either due Boyle County, for the year 1901, or for any other taxes either under the act of 1900 or under any other act of law whatever.

Paragraph 2.

The aforesaid defendants deny that Article 2, Chapter 92,
100 of the General Statutes of Kentucky was ever repealed by any act of the General Assembly of the Commonwealth of Kentucky, either approved on the — day of ——, 1892, or at any other time, and deny that said article 2 of chapter 92 was, "never in force subsequent to the aforesaid — day of —— 1892, and deny that said The Citizens National Bank, had either knowledge or notice of any such act of a repeal as aforesaid."

Paragraph 4.

The aforesaid defendants deny that said act of the General Assembly of the Commonwealth of Kentucky approved March 21st, 1900, "when in motion" dispels any illusion of the defendants that it can any longer escape the payment of municipal, county and district taxes for the protection it received under the law, or otherwise or at all and especially deny that they or either of them have ever at any time been afflicted in the slightest degree with any illusion on the subject of taxation.

Wherfore, these defendants pray as they have heretofore prayed in their answer and response herein, and will so ever pray.

THE CITIZENS NATIONAL BANK,
By M. J. FARRIS,
President of the Citizens National Bank.
101 J. A. QUISENBERRY,
Cashier of the Citizens National Bank,
By ROBERT T. QUISENBERRY,
Attorney, Danville, Kentucky.

Said rejoinder is endorsed on back in words and figures as follows:

1901, July, filed in open court. J. B. Nichols, Clerk.

On the same day of said term of said court, the following order was made in said action and duly entered of record:

Motion by Plaintiff to Submit for Judgment.

On motion of the plaintiff by attorney, this cause is submitted to the court for its judgment, to the granting of which motion, the defendants by attorney, except.

On the same day of said term of said court, the following order was made in said action and duly entered of record:

Motion by Defendants Asking the Court to Separate its Finding of Facts from Conclusions of Law.

The defendants herein, this day filed a motion asking the court to separate its finding of facts from conclusions of law before rendering a judgment herein, and the court took time.

Said motion above mentioned and referred to is in words and figures as follows:

102 The law and facts in the above entitled cause having been submitted to the Court, now comes the aforesaid defendants by their attorney, Robert T. Quisenberry, and moves the court, at the conclusion of hearing the evidence and the testimony in the said cause that said court separate its findings of facts and conclusions of law.

ROBERT T. QUISENBERRY,
Attorney for Defendants.

Said motion is endorsed on back in words and figures as follows: 1901, July 5th, filed. J. B. Nichols, Clerk.

On the same day of said term of said court the following judgment was rendered by the Court in said action and duly entered of record:

Judgment of Boyle County Court.

Upon the pleadings and exhibits on file, and the proof heard, the court is of the opinion and so decides that the shares of stock in The Citizens National Bank is liable for taxation for county purposes and has never been assessed or listed for taxation for county purposes for the years 1894, '95, '96, '97, '98, and '99, and it is now ordered that said shares of stock be listed and assessed and entered by the clerk of this court in a book kept by him for said purpose in the name of said bank for the year 1894, as 1500 shares at the cash valuation of $242,500.00 upon which the sheriff will

103 collect the sum of $327.37 that being 13½ cents on the $100.00 of same levied for county purposes for said year, and for the year 1895, as 1500 shares at the cash valuation of $242,900, upon which the sheriff will collect the sum of $352.20 that being 14½ cents on the $100.00 of same levied for county purposes for said year, and for the year 1896, as 1500 shares at the cash valuation of $243,400 upon which the sheriff will collect the sum of $415.95, that being 17½ cents on the $100.00 of same levied for county purposes for said year, and for the year 1897 as 1500 shares at the cash valuation of $243,850.00 upon which the sheriff will collect the sum of $451.12, that being 18½ cents on the $100.00 of same levied for county purposes in said year, and for the year 1898, at 1500 shares at the cash valuation of $180,000.00, upon which the sheriff will collect $585.00 that being 32½ cents on the $100.00 of same levied for county purposes for said year, and for the year 1899, as 1000 shares at a valuation of $140,000.00 upon

which the sheriff will collect the sum of $553.00 that being 39½ cents on the $100.00 of same levied for county purposes for said year, and thereupon said clerk appeared in open court with said book and entered said assessment in said book in the name of said bank, together with the date, location and number of shares of said stock and valuation as fixed above for each of said years, and it is further ordered that said Citizens National Bank pay in addition to said taxes 20% upon each of said sums due said county in each of said years as above stated as the penalty provided by law and the
104 cost of *of* these proceedings, and the clerk of this court will certify to the sheriff and enter upon his book the taxes to be collected by him as herein provided, to which foregoing order and judgment, and the rendition and entering of which, the aforesaid defendants at the time excepts and still excepts.

On the same day of said term of said court, the following order was made in said action by the court, and duly entered of record:

Order Noting Filing Motion and Grounds for New Trial.

The defendants herein, The Citizens National Bank, this day filed a motion and grounds in writing that the Court vacate the judgment rendered herein and grant said defendant a new trial, which being submitted to the court, the court upon consideration overruled said motion, and refused to grant said defendant a new trial, to which ruling of the court the Defendants excepts and prays an appeal to the Boyle Circuit Court, which is granted.

Said motion and grounds for a new trial above mentioned and referred to is in words and figures as follows:

Motion and Grounds for New Trial.

And now comes The Citizens National Bank, M. J. Farris, President of The Citizens National Bank, and J. A. Quisenberry, Cashier of The Citizens National Bank, the aforesaid defendants in
105 the above entitled action, and moves the court to set aside and vacate the decision, order, judgment, and assessment, made, rendered and entered herein by said court and to grant these defendants a new trial for the following reasons and upon the following grounds.

First. That said decision, order, judgment and assessment are not sustained by the evidence.

Second. That said decision, order, judgment and assessment are contrary to law.

ROBERT T. QUISENBERRY,
Attorney for Defendants.

On the same day of said term of said court, the following order was made by the court and duly entered of record.

Order Tendering and Filing Bill of Exceptions.

This day came the defendant The Citizens National Bank, by Attorney and tendered and filed its bill of exceptions herein, which being examined by the court, was allowed by the court, and signed by the judge thereof, as the manner is, and is ordered to be made a part of the records of this case without being spread at large upon the order book.

Said bill of exceptions above mentioned and referred to is in words and figures as follows:

(For bill of exceptions see next page.)

Bill of Exceptions.

Boyle Circuit Court.

106 Bill of Exceptions.

THE COMMONWEALTH OF KENTUCKY, for the use of BOYLE COUNTY, Plaintiff,

vs.

THE CITIZENS NATIONAL BANK, Defendant.

Bill of Exceptions.

Be it remembered that at Danville, Kentucky, July 6th, 1901, that being the —— day of ——— term of the Boyle County court, came the parties in the above entitled action, and the law and facts being submitted to the court, the testimony offered and the proceedings had were as follows:

Mr. JOHN QUISENBERRY, called as a witness for the Commonwealth, being duly sworn, and examined by Mr. Robert Harding, Attorney for plaintiff, testified as follows:

Testimony of Mr. John Quisenberry.

1. Mr. Quisenberry, what official position do you hold with The Citizens National Bank?

A. I am Cashier of The Citizens National Bank.

Q. What was the capital stock of that bank for the year 1899?

A. $100,000.00.

Q. Divided into shares of how many dollars each?

A. $100.00 per share.

Q. What was the amount of surplus for the year 1899?

A. My recollection is that it was $30,000.00, but I would
107 have to refer to the books to be absolutely sure. Thirty thousand dollars.

Q. What were the undivided profits and accumulations in 1899?

A. At what date?

Q. For the year 1899, the 15th of September?
A. Well, I couldn't tell unless I looked at the books.
Q. Will you please do so?
A. Yes sir. The undivided profits were $11802.50 on September 15th, 1899.
Q. What was the capital stock in 1898, on the 15th of September?
A. I couldn't answer that without referring to the books?
Q. Will you please examine the books?
A. Yes sir. Capital $150,000.00 on September 15th, 1898.
Q. What was the amount of the surplus on September 15th, 1898?
A. $30,000.00.
Q. What were the undivided profits and accumulations for the year 1898?
A. $7.40 on September 15th, 1898.
Q. What was the capital stock in the year 1897?
A. $150,000.00.
Q. Please state the amount of surplus and undivided accumulations in 1897?
A. Surplus, September 15th, 1897, $30,000.00. Undivided profits, $1,808.88.
108 Q. In 1896, what was the capital stock of The Citizens National Bank?
A. On July 1st, 1896, the capital stock was $150,000.00.
Q. What was the amount of surplus at that time?
A. $100,000.00.
Q. What was the amount of undivided accumulations?
A. $3548.11.
Q. For the year 1895, what was the amount of the capital stock?
A. $150,000.00.
Q. What was the surplus?
A. $100,000.00.
Q. What was the undivided accumulations?
A. $2287.44.
Q. In 1894, what was the capital stock?
A. $150,000.00.
Q. What was the surplus?
A. $100,000.00.
Q. What was the undivided accumulation.
A. $3542.91.
Q. Do you know what the stock sold for per share in the year 1899?
A. No sir, I have no recollection.
Q. In 1898, what did the stock sell for per share?
A. I do not remember, sir.
Q. In 1897?
A. I don't recollect.
109 Q. In 1896?
A. I don't know.
Q. In 1895?

A. I don't know.

Q. Was that stock listed or assessed by you or the President of the bank for the taxes of 1899, due Boyle County?

A. Not that I recollect, sir.

Q. Were they listed by you or the President, or the bank or the county assessor or anybody else for the taxes of 1898?

A. Not that I recollect, sir.

Q. In the year 1897, were those shares of stock listed by you or the president of the bank or the county assessor or anybody else for the taxes of 1897, due Boyle County?

A. Not that I recollect.

Q. How about the year 1896?

A. The same answer holds good.

Q. In 1895?

A. The same answer.

Q. In 1894?

A. Same answer.

Q. In stating the amount of surplus and undivided accumulations, does any real estate or fixtures of the bank enter into or make up any portion or amount of that surplus or undivided pprofits?

A. Yes, sir, when we have it does.

110 Q. What real estate, and what was the value thereof, did your bank have in 1899, '98, '97, '96, '95 and '94?

A. —.

In 1899, amount carried on books	$ 7500.00
In 1898 " " " "	7500.00
In 1897 " " " "	15500.00
In 1896 " " " "	15500.00
In 1895 amount carried on books	15500.00
In 1894 " " " "	15500.00

Q. I believe you were assesed for the real estate separately for all those years?

A. Yes, sir.

Q. Please then furnish me with the amount of the assessment for those years of the real estate so that I can make the proper deductions on the value of this stock?

A. As far as I am able to ascertain, assessments were made as follows:

1899, assessed	$ 4500	Tax paid	$ 45.00
1898 "	11050	Tax paid	103.80
1897 "	11650	Tax paid	92.05
1896 "	9952	Tax paid	57.69
1895 "	10510	Tax paid	63.20
1894 "	10865	Tax paid	62.25

Q. I believe you paid the county tax in 1895 on these shares of stock, did you?

A. We paid one year, I don't know whether it was in
111 1893, or 1894, we paid one year.

Q. Will you furnish me with a list of the Stock holders

and the residences of the stock holders of the shares of stock in the bank, in 1899, '98, '97, '96, '95 and '94?

A. Yes, sir I will furnish it from a list made out July Ist.

Cross-examination by Mr. ROBERT T. QUISENBERRY, counsel for defense:

Q. The taxes which the Citizens National Bank paid to the county, referred to in the direct examination, were the taxes paid upon the stock of the bank, or were they paid upon the franchise?

A. Upon the franchise, and certified to the State officials.

Q. You refer to the Auditor?

A. Yes, sir.

Q. Has The Citizens National Bank kept a list of its stockholders during all the years of 1899, '98, '97, '96, '95 and '94, and is that list made out on the 1st of July of each year?

A. On the first Monday in July. It is required of The national bank that they have a list made out at that time.

Q. And this is the list to which you referred when you said in your direct examination that you would furnish a list of its stockholders?

112 A. Yes sir.

Q. Has the stock of The Citizens National Bank been owned by residents of Boyle County, as nearly as you can recollect?

A. We have some non-resident stock holders, I think, which would come along through the entire period.

Q. Will that list which you have to furnish have the names not only of the stockholders, but also the names of the residence?

A. Yes, sir, that is what the law requires me to keep.

Q. That list during the years 1894, '95, '96, '97, '98 and '99, did the authorities require to be kept at all times full and complete with the names and residence of the share holders in said bank and the number of shares, subject to the inspection of all officers of law authorized to make amendments, creditors and stock holders, during the business hours of each day in which business was legally transacted?

A. We kept the list during these years, open to inspection during the legal business hours?

Q. Did the assessor of Boyle County at any time during the years 1894, '95, '96, '97, '98 and '99, apply to the Bank to inspect that list?

A. I have no recollection of their applying for the information.

Q. Did the assessor of Boyle County, during the year 1899 obtain a list of those stock holders from The Citizens National Bank?

113 A. He did apply for it and received it.

Q. Did he apply for it in any other of those years named?

A. He did not.

Q. Did the Citizens National Bank pay any taxes during the years 1894, '95, '96, '97, 98 and '99?

A. It did.

Q. Can you state that amount of taxes it paid and to whom?

A. —

In 1894, State Kentucky (Hewitt Law) Frankfort Ky..	$1029.01
In 1894, sheriff Boyle Co. Ky. (real estate)	66.25
In 1895, State Kentucky (Hewitt Law,) Frankfort Ky..	$1637.02
In 1895, sheriff Boyle Co, Ky (real estate).....	$63.20
In 1896, State Kentucky (Hewitt law) Frankfort, Ky..	$1125.00
In 1896, sheriff Boyle Co, Ky. (real estate).....	$67.67
In 1897, State Kentucky, Frankfort, Ky.....	$1276.95
In 1897, sheriff Boyle Co, Ky (real estate).....	$92.05
In 1898, State Kentucky, Frankfort, Ky	$986.50
In 1898, sheriff Boyle County (real estate)	$103.80
In 1899, sheriff Boyle County, (real estate).....	$103.80
In 1899, sheriff Boyle County, (real estate)	$45.00

Stockholders listed stock and paid on their stock all other taxes assessed.

Q. Under whose demand did The Citizens National Bank pay these taxes?

A. Under demands from the State. Except the taxes which were paid on real estate, we paid that on demand from the county.

Q. Then during the years, 1894-95-96-97-and 98 and 99
114 did the County of Boyle make any demand on The Citizens National Bank for any taxes at all?

A. None except for the real estate.

Q. At what rate of taxation was the taxes of The Citizens National Bank paid to the State of Kentucky during the years, 1894, '95, '96, '97, '98 and '99?

A. 1894, under the Hewitt Law, 75 cents per share of Capital and 42½ cents per $100 on surplus and undivided profits.

In 1895, under Hewitt Law, 75 cents per share of capital, and 42½ cents per $100 on surplus and undivided profits.

In 1896, under Hewitt Law, 75 cents per share of capital and 45½ cents per $100 on surplus and undivided profits.

In 1897, under a new law, do not know rate now.

In 1898, under a new law, do not know rate now.

In 1899, stock holders listed stock and paid thereon.

Q. How much per share did you pay during those years to the State, what amount on each share did you pay?

A. We paid at the rate the State demanded, at the rate prescribed by the Hewitt Law part of the time.

Q. Please state to me in what years and on what date you paid under the Hewitt Law?

A.—

1892, paid July 1st, 1892.
1893, paid July 1st, 1893.
1894, paid July 1st, 1894.
115 1895, paid July 1st, 1895.
1896, paid July 1st, 1896.

Q. Did the State authorities demand of The Citizens National Bank that it pay taxes to the State under the Hewitt Law in 1894, '95, and '96?

A. It did.

Q. Did The Citizens National Bank for the years 1892, '93, '94, '95 and '96, on the 1st day of July in each of the aforesaid years, report to the Auditor of Public Accounts of the State of Kentucky, a true account of the capital stock, and the true account or certificate of the undivided profit and undivided accumulation, and how and in what said profits were invested, and pay into the Treasury of the aforesaid State, the amount of taxes due thereon?

A. It did.

Q. Did The Citizens National Bank by a proper corporate authority and with the consent of the majority in interest of the stock holders, at a call- meeting, give its consent to the levying of said taxes, and agree to pay same under the authority known as the Hewitt act, as herein provided?

A. It did.

Q. Will you file a copy of the record of that meeting or letter written by the Auditor concerning it?

A. I will.

116 Copy of poll book of a meeting of the stock holders of The Citizens National Bank of Danville, held November 8th, 1898, to vote for the acceptance or rejection of the provision of the revenue law, passed at the last meeting of the General Assembly of Kentucky, as it relates to the taxation of banks and bank capital, to-wit:

John J. Craig	74
John J. Craig, Trustee	40
Amanda G. Craig, by J. J. Craig, Atty	10
Alma Craig	10
Lettie Craig	10
Bettie Craig	10
M. J. Farris	50
T. A. Bradley	10
A. G. Whitley	20
W. B. Holmes	5
Jno. Fogarty, by W. B. Holmes, Att'y	10
A. F. Cheek, by W. B. Holmes, Att'y	34
C. P. McGoodwin, ex't'x, W. B. Holmes, Att'y	35
A. H. Meyer, by Holmes, Att'y	5
T. G. Armstrong, by Holmes, Att'y	15
C. T. Armstrong, by Holmes, Att'y	10
J. J. Wood, by Holmes, Att'y	10
R. G. Evans, by Holmes, Att'y	40
M. D. Logan, by Holmes, Att'y	10
Mrs. J. T. & C. T. Worthington, by Holmes, Att'y	10
Amanda C. Fales, by Holmes, Att'y	7
117 J. C. Fales, by Holmes, Att'y	15
G. W. Chestnut, by Holmes, Att'y	20
Nelson Wingate, by Holmes, Att'y	10
A. F. Quisenberry, by Holmes, Att'y	30
W. C. Webb, by Holmes, Att'y	30

	W. E. Sanders, by Holmes, Att'y	3
	Jacob Cozatt, by Holmes, Att'y	20
	Eugenia Whitley, by Holmes, Att'y	10
	Lucy Quisenberry, by Holmes, Att'y	50
	O. P. Cozatt, by Holmes, Att'y	5
	H. J. Cowan, by Holmes, Att'y	10
	Jno. Cowan, by Holmes, Att'y	12
	S. E. Bottom, by Holmes, Att'y	15
	Geo. Cowan, by Holmes, Att'y	15
	Sarah Cowan, by Holmes, Att'y	15
	William Berkley, by Holmes, Att'y	10
	Sanford Ewrin, by Holmes, Att'y	10
	American Gentry, by Holmes, Att'y	5
	Jas. T. Cullom, by Holmes, Att'y	10
	R. T. Quisenberry, by Holmes, Att'y	25
	Jacob Harlan, Trustee, by Holmes, Att'y	20
	L. T. Harlan, by Holmes, Att'y	10
	W. B. Burke, by Holmes, Att'y	10
	R. B. Rice, by Holmes, Att'y	5
	Jas. Kinnaird, by Holmes, Att'y	7
	J. A. Cheek	127
	J. A. Quisenberry	87
118	Center College of Kentucky, by J. A. Cheek, Treas	20
	Total shares	1011

All for acceptance—none against acceptance.

We, the undersigned judges, of this special election, held by the stock holders of The Citizens National Bank of Kentucky, at their banking house, this November, 8th 1887, to accept or reject the provision of an act to amend the revenue laws of the Commonwealth of Kentucky, passed by the last meeting of the General Assembly of Kentucky, *passed by the last meeting of the General Assembly of Kentucky,* approved May 17th, 1886, certify that the said election has been held in conformity with the requirements of said law, and that 1011 votes were cast for acceptance of the provisions of the law as it relates to the taxation of banks and bank capital, as is shown by the above poll book of said election.

T. A. BRADLEY,
A. G. WHITLEY,
JOHN MINOR,
Judges.

To the cashier of the Citizens National Bank, Danville, Kentucky.

I certify the above is a true copy of the — above meeting.

J. A. QUISENBERRY, *Cashier.*

119 Q. Did the aforesaid bank furnish its consent to and with the authority of the State of Kentucky, and under the seal of the aforesaid bank to the Governor of this Commonwealth?

A. It did.

Q. At what date?

A. My recollection is, that on November, 8th, 1887, the same day the stockholders' meeting. The letter is, I suppose, on file at Frankfort, and will show for itself the date.

Q. Did the State of Kentucky accept payment under this so-called Hewitt Bill from The Citizens National Bank?

A. It did.

Q. Has it ever refused a single time to accept payment from The Citizens National Bank under the Hewitt Bill?

A. Never.

Q. Has the Citizens National Bank fully and faithfully complied with all the terms of the aforesaid Hewitt Bill? during the years, '92, '93, '94, '95 and '96?

A. It has.

Redirect examination by Mr. HARDING:

Q. You paid the taxes for 1893?

A. Yes Sir.

Q. Please file also a list of the present stockholders of the bank for this year, for the first of July, 1901.

(Objected to by counsel for Defendants, objection over-ruled, to which ruling of the Court defendants by counsel excepted.)

A. It was also proven that the rate of taxation for county
120 purposes in the aggregate for 1894, was 13½ cents, for '95. 14½ cents, for '96, 17½ cents, for '97, 18½ cents, for 1898, 32½ cents, for '99, 39½ cents, on the $100 or taxable property in Boyle County, Kentucky.

And this is all the evidence offered by the plaintiffs either in chief or at all, and the defendants offered no evidence, and this bill of exceptions contains and shows all the evidence offered by either party.

The court having been requested by the attorney for the defendant by motion in writing to separate its findings of facts and conclusions of law, did on Saturday, July 6th, 1901, being the — day of the —— term of said court, file and enter a document, which is in words and figures as follows:

Judg't Boyle Co. Court.

"Boyle County Court.

X 45.

COMMONWEALTH OF KENTUCKY, for, &c., Pl'ff,
vs.
THE CITIZENS NATIONAL BANK, &c., Def'ts.

Upon the pleadings and exhibits on file, and the proof heard, the court is of the opinion and so decides that the shares of stock in

The Citizens National Bank *is* liable for taxation for county, purposes, and has never been assessed or listed for taxation for
121 county purposes for the year 1894, '95, '96, '97, '98 or '99 and it is now ordered that said shares of stock be listed and assessed and entered by the clerk of this court in a book kept by him for said purpose in the name of said bank for year 1894 *vs.* 1500 shares at the cash valuation of $242,500, upon which the sheriff will collect the sum of $327.37, that being the 13½ cents on the $100 of same levied for county purposes for the said year, and for the year 1895, *vs.* 1500 shares of the cash value of $242,900, upon which the sheriff will collect the sum of $352.20, that being 14½ cents on the $100 of same levied for county purposes for said year, and for the year, 1896, *vs.* 1500 shares at the cash valuation of $243,400, upon which the sheriff will collect the sum of $415.95, that being 17½ on the $100 of same levied for county purposes for said year, and for the year 1897, *vs.* 1500 shares at the cash valuation of $243,850 upon which the sheriff will collect the sum of $451.12 that being 18½ cents on the $100 of same levied for county purposes in said year, and for the year 1898, *vs.* 1500 shares at the cash valuation of $180,000 upon which the sheriff will collect the sum of $585.00 that being 32½ cents on the $100 of same levied for county purposes for said year, and for year 1899, *vs.* 1000 shares at a valuation of $145,80- upon which the sheriff will collect the sum of $553.00 that being 39½ cents on the $100 of the same levied
122 for county purposes for said year thereupon said clerk appeared in open court with said book and entered said assessment in said book in the venue of said bank together with the dates location and number of shares of said stock and valuation as filed above for each of said years and it is further ordered that said Citizens National Bank pay in addition to said taxes 20% per each of said sums due said county in each of said years as above stated, as the penalty provided by law and the costs of these proceedings, and the clerk of this court will certify to the sheriff and enter upon his book the taxes to be collected by him as herein provided," to which order and judgment, and rendition and entering of which the aforesaid defendant, at the time excepted and still excepts.

Whereupon the same day the said defendants filed their motion and grounds for new trial in writing in said court, which is as follows:

Motion & Grounds for New Trial.

Boyle County Court.

COMMONWEALTH OF KENTUCKY, for Use and Benefit of BOYLE Co.,
THE COMMONWEALTH OF KENTUCKY,
vs.
THE CITIZENS NATIONAL BANK, M. J. FARRIS, President of The Citizens Nat'l Bank; J. A. QUISENBERRY, Cashier of The Citizens Nat'l Bank.

123 And now comes The Citizens National Bank, and J. A. Quisenberry, Cashier of The Citizens National Bank, and M. J. Farris, President of The Citizens National Bank, the aforesaid defendants, in the above entitled action, and move the court to set aside and vacate the decision, order, judgment, and assessment made, rendered and entered herein by said court, and to grant these defendants a new trial for the following reasons and upon the following grounds:

First. That said decision, order, judgment and assessment are not sustained by the evidence.

Second. That said decision, order, judgment and assessment are contrary to law.

And moved the court to set aside and vacate its said decision, order, judgment and assessment herein, and to grant them a new trial which motion the court over-ruled, and refused to grant these defendants a new trial in this action, to which ruling of the court, these defendants at the time excepted, and still except, and prayed an appeal to the Circuit Court of Boyle County, Kentucky, which was granted.

Whereupon, this bill of exceptions was presented on the same day to the Court for attestation and signature and it is hereby certified that this bill of exceptions contains and shows all the evidence offered by either party that this bill is true, and the same is certified as the manner is.

W. H. PREWITT,
Judge of the Boyle County, Ky., Court.

124 Said bill of exceptions is endorsed on back in words and figures as follows:

Boyle Circuit Court. 1901, Sept. 2nd, filed in clerk's office. Att. R. G. Price, clerk.

A copy of the judgment which is found on page 28 of this transcript, together with all of the papers, pleadings, exhibits and bill of exceptions, and orders of the court, and all the proceedings had in the Boyle County Court, was filed in the clerk's office of the Boyle Circuit Court on August 31st, 1901, and upon the filing of said judgment, etc., the clerk of said court issued a summons and three

copies, supersedeas and three copies, a supersedeas bond having — executed — clerk.

Said supersedeas bond is in words and figures as follows:

Supersedeas Bond.

THE CITIZENS NATIONAL BANK, DANVILLE, KENTUCKY, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, for Use and Benefit of BOYLE COUNTY, Appellee.

Upon An Appeal from a Judgment of the Boyle County Court Rendered on the 6th Day of July, 1901.

Whereas, said appellant, The Citizens National Bank of
125 Danville, Ky., has taken an appeal from the judgment of the Boyle County Court, rendered on the 6th day of July, 1901, against said appellant, The Citizens National Bank, Danville, Ky., in favor of the said appellee, The Commonwealth of Kentucky, for the use and benefit of Boyle County, for the sum of $2684.64, and 20% penalty and costs, and the appellant desires to supersede the said judgment above mentioned.

Now, we The Citizens National Bank of Danville, Ky., principal, and —— —— sureties, do hereby covenant to and with the appellee — all costs and penalties and damages that may be adjudged against the appellant on the appeal, and also that they will satisfy and perform the judgment above stated in case it shall be affirmed, or any judgment or order which the Boyle Circuit Court may render, or order to be rendered, by the inferior court, not exceeding in amount or value the judgment aforesaid.

Witness our hands this 7th day of July, 1901.

THE CITIZENS NATIONAL BANK OF DANVILLE, KENTUCKY,
By M. J. FARRIS.
M. J. FARRIS.

Subscribed and acknowledged in my presence and taken and approved by me this 7th day of July, 1901.

126 J. B. NICHOLS,
Clerk Boyle County Court.

Said supersedeas bond is endorsed on back in words and figures as follows:

1901, July 7th, filed in clerk's office. J. B. Nichols, Clerk.

On said supersedeas bond, the following supersedeas was issued.

I do certify that an appeal was granted by the above styled court on the 6th day of July, 1901, to the said Citizens National Bank, Danville, Ky., from a judgment obtained therein against it on the 6th day of July, 1901, by the Commonwealth of Kentucky, for the use and benefit of Boyle County for the sum of $2684.64, together

with 20% penalty and costs, and that a bond to supersede said judgment has been executed before me.

Whereof, the Commonwealth of Kentucky, for the use and benefit of Boyle County, and all others, are commanded to stay proceedings on said judgment.

Witness my hand as clerk of the Boyle County, court, this 6th, day of July, 1901.

J. B. NICHOLS,
Clerk Boyle County Court, Ky.

127 Officer's return on said supersedeas is as follows:

Officer's Return on Supersedeas.

Executed by delivering a copy of the within to W. H. Prewitt, judge of the Boyle County Court.

This 13th day of July, 1901.

H. C. COZATT,
Cor. B. C.

On January 22nd, 1902, that being Wednesday, the 3rd, day of the regular January term of the Boyle Circuit Court the following order was made in said action by the court and duly entered of record:

Order Setting Trial in Circuit Court.

By agreement of parties, this case is set for trial on Thursday, January, 30th, 1902.

On April 22nd, 1902, that being Tuesday, the 2nd day of the regular April term of the Boyle Circuit Court, the following order was made by the Court and duly entered of record:

Order Filing Demurrer to Answer.

The plaintiff, by attorney, this day filed a general demurrer to the 1, 2, 3, 4, and 5th, paragraphs of the answer of the defendant, which being submitted to the court, the court for consideration took time.

128 Said demurrer above mentioned and referred to is in words and figures as follows:

Demurrer to Answer.

The plaintiff, The Commonwealth of Kentucky, for the use and benefit of Boyle County, Kentucky, and the Commonwealth of Kentucky, comes and demurs to the 1, 2, 3, 4, and 5th, paragraphs of the answer and response of the defendand herein, because same

taken together — separately do not state facts sufficient to constitute a defense herein.

Whereof, etc.

ROBERT HARDING,
W. J. PRICE, *Att'ys.*

Said demurrer is endorsed on back in words and figures as follows:

1902, April 22nd, filed in open court. Att., R. G. Price, Clerk.

On September 12th, 1902, that being Friday, the 5th, day of the regular September term of said court, the following order was made by the court and duly entered of record.

Order Overruling Demurrer of Def't to Jurisdiction of the County Court.

The court over-ruled said demurrer of The Citizens Na-
129 tional Bank to the jurisdiction of the County Court and to the mode of procedure by pl'ff in the county court, to which ruling of the court, the defendant excepts.

On April 25th, 1903, that being Saturday, the 6th day of the regular April term of the Boyle Circuit Court, the following order was made by the court and duly entered of record:

Order Submitting for Judgment.

On motion of plaintiff by attorney it is ordered that this action be submitted to the Court for its judgment.

On May 7th, 1903, that being Thursday, the 16th day of said term of said court, the following judgment was rendered by the court and duly entered of record.

Judgment.

The above styled action having been submitted to the court for its judgment upon the pleadings, exhibits and entire record herein, including the bill of exceptions, and the court being sufficiently advised, adjudges that this action and proceedings be, and the same is hereby, dismissed, and that said The Citizens National Bank of Danville, Ky., M. J. Farris, President, and J. A. Quisenberry, Cashier, recover their costs herein expended, to all of which the Commonwealth of Kentucky for the use and benefit of Boyle County and the Commonwealth of Kentucky except and pray an appeal to the Court of Appeals, which is granted.

130 On May 11th, 1903, the following schedule for appeal was filed in the clerk's office of the Boyle Circuit Court, and is in words and figures as follows:

Schedule.

For the purpose of an appeal to the Court of Appeals, the Clerk of the Boyle Circuit Court will make a true, full and complete transcript of the record and proceedings of the case mentioned in the caption as the same remains in file in his office.

ROBERT HARDING &
W. J. PRICE,
Att's for Plaintiff.

On January 15th, 1906, that being Monday, the 1st day of the regular January term of said court, the following order was made by the Court and duly entered of record:

COMMONWEALTH OF KENTUCKY, for Use, &c.,
vs.
CITIZENS NATIONAL BANK.

Mandate.

The Commonwealth of Kentucky by attorney filed in
131 Clerk's office of the Boyle Circuit Court the following mandate from the Court of Appeals of Kentucky, in the above styled prosecution, which is in words and figures as follows, to-wit:—

"THE COMMONWEALTH OF KY.,
The Court of Appeals,
APRIL 15*th*, 1904.

Appeal from a Judgment of the Boyle Circuit Court.

The court being sufficiently advised, it seems to them the judgment herein is er-oneous.

It is therefore considered that said judgment be reversed and cause remanded for further proceedings not inconsistent with the opinion herein.

Which is ordered to be certified to said Court.

A copy—Attest:

J. MORGAN CHINN, *C. C. A.*
By R. W. KEENON, *D. C.*

Issued January 3rd, 1906.

Ordered that the judgment heretofore rendered herein is set aside and held for naught consistent with the above opinion and that this cause be now reinstated upon this court's docket.

On the 25th, day of September, 1906, that being Tuesday, the 14th day of the regular term of said Court, the following order was made by the Court and duly entered of record.

The defendant, The Citizens National Bank, by Attorney, this

day offered to be filed herein an amended answer and re-
132 sponse to the filing of which the plaintiff, by attorney objected.

The Court for consideration took time.

On the 30th day of January, 1907, that being Wednesday the 15th, day of the regular term of said Court, the following order was made by the Court and duly entered of record:

The plaintiff, by attorney, this day, filed herein its reply to defendants' Amended Answer.

Said Amended Answer heretofore offered to be filed is allowed to be filed.

Amended Answer and Response.

The aforesaid Defendants, The Citizens National Bank, and J. A. Quisenberry, Cashier of The Citizens National Bank, for an amendment to their Answer and Response herein further state and allege that the rights and powers claimed by, and set forth in the Statement filed herein by the aforesaid Plaintiffs to assess the shares of stock in the aforesaid Bank, affix penalty thereon, and against said Bank for the failure to list said stock for taxation, and to collect taxes thereon, and penalties from said bank for the years 1892-1893-1894-1895 and 1896, did not accrue within five years next preceding the day on which the aforesaid statement was filed before the County Court of Boyle County, Kentucky, and this action, or proceeding was commenced, which facts these aforesaid De-
133 fendants plead, and rely upon in bar to all attempts to assess the stock of said Bank and to affix penalties either against said Bank or said stock, for failure to list said stock for taxation, and to collect either said taxes or penalties thereon for the years 1892-1893-1894-*1894 and* 1895 and 1896.

These defendants allege that the right to list, assess and tax the stock of the aforesaid Bank for the years 1892-1893-1894-1895 & 1896, either by this, or a similar proceeding, if the same ever existed, which however they distinctly deny, accrued more than five years next preceding the filing of the Statement herein, and the beginning of this proceeding, which facts these defendants plead and rely upon in bar of all attempts to assess the stock of said Bank, and to affix penalties either against said Bank, or said stock for failure to list said stock for taxation for and during the years 1892-1893-1894-1895 & 1896, and in bar of the collection either of said taxes on said stock, or penalties for the failure to list and assess said stock for and during either or any of the aforesaid years.

These defendants allege that the following is a true, complete and accurate list of the shareholders in the aforesaid Bank, for and during the years, 1894-1895-1896-1897-1898 and 1899; that during all of said years, each shareholder resided and was domiciled in the town and State written immediately opposite his or her name, that the figures written after each name represent the number of shares owned by that person during the year or years under
134 which said figures are placed, namely—

	A.D. 1894.	A.D. 1895.	A.D. 1896.	A.D 1897.	A.D. 1898.	A.D. 1899.
Mrs. T. G. Armstrong, Perryville, Ky.....	15	15	22	22	22	14
C. T. Armstrong, Perryville, Ky.....	10	10	13	13	13	10
C. R. Anderson, Danville, Ky.....	...	...	...	...	...	10
Anderson & Spilman, Danville, Ky	...	...	3	3		
S. E. Bottom, Perryville, Ky.....	30	30	20	30	30	20
J. L. Bruce, Danville, Ky.....	25	25	25	10	10	12
Carrie M. Bruce, Danville, Ky.....	5	5	5	5		
Mary C. Bruce, Danville, Ky.....	...	...	...	...	14	10
Homer Baughman. Danville, Ky.....	5	5	5	5	5	3
S. O. Baughman, Estate, Danville.....	10	10	10	10	10	
W. E. Baughman, Danville, Ky.....	4	4				
Mrs. M. I. Baughman, Danville, Ky.....	...	...	...	...	8	5
S. C. Brewer, Parksville, Ky.....	3	3	3	3	3	2
T. A. Bradley, Danville, Ky.....	10	10	10	10	10	6
W. B. Burke, Shelby City, Ky.....	10	10	10	10	10	6½
Laura Broyles, Perryville, Ky.	4	4	4	4	4	3
Sarah Campbell, Danville, Ky.....	11	11	11	11	14	10
Gran. Cecil, Trustee, Danville.....	10	10	10	10	10	7
Sara Cecil, Danville, Ky.....	1					
C. P. Cecil, Danville, Ky.....	1	1	1	1	1	
Lizzie W. Cecil, Danville, Ky.....	...	...	10	10	10	7
Centre College, Danville, Ky..... ...	20	20	20	20	20	13
J. A. Cheek, Danville, Ky.....	80	90	80	81	55	35
135 S. R. Cheek, Danville, Ky.....	5	5	5	5	5	3
A. F. Cheek, Danville, Ky.....	45					
F. J. Cheek, Paris, Ky.....	...	10	10	10	10	10
G. W. Chestnut, Danville, Ky.....	20	20	20	20	20	14
John J. Craig, Danville, Ky.....	75	75	75	75	75	50
John J. Craig, Trustee.....	40	40	40	40	40	26
A. G. Craig, Danville, Ky.....	10	10	10	10	10	7
Lettie Craig, Danville, Ky	10	10	10	10	10	7
Bettie Craig, Danville, Ky.....	10	10	10	10	10	7
Jacob Cozatt, Parksville, Ky.....	10	10	5	5	5	20
John Cowan, Chattanooga, Tenn.....	12	12	12	12	12	
George Cowan, Danville, Ky.....	15	15	25	25	25	
Sarah Cowan, Danville, Ky.....	15	15	15	15	15	35
Harry J. Cowan, Danville, Ky.....	10	10	10	10	10	7
O. P. Cozatt, Wichita, Kansas.....	5	5				
Richard Coob, Jr., Danville.....	10	10	10	10	10	10
L. L. Erwin, Danville, Ky	10	20	20	20	20	10
L. L. Erwin, Ex'trix, Danville.....	10					
R. G. Evans, Danville, Ky.....	50	50	50	50	50	33
Josephine Evans, Danville.....	10	10	10	10	10	8
J. C. Fales.....	15	15	20	20	20	13
A. C. Fales, Danville, Ky.....	7	7	7	7	7	5
M. J. Farris, Danville, Ky.....	79	80	70	70	105	65
Fidelity Trust & Safety Vault Co., Trustee of Sasan Redd, Louisville, Ky.....	...	10	10	10	10	6

		A.D. 1894.	A.D. 1895.	A.D. 1896.	A.D. 1897.	A.D. 1898.	A.D. 1899.
	Fidelity Trust & Safety Vault Co.,						
136	Trustee of Mary B. Thomas, Louisville	[10*]	10	10	10	10	6 [10*]
	John Fogarty, Danville, Ky	10					
	Bridget Fogarty, Danvllle, Ky	...	10	10	10	10	7
	J. W. Gill, Danville, Ky	10					
	America Gentry, Danville, Ky	9	9	9	9	9	6
	Ellen Gilmore, Valley Oak, Ky	26					
	W. J. Gilmore, Danville, Ky	...	13	13	13	13	9
	Mary P. Gill, Danville, Ky	...	10	10	10	10	7
	Gilcher & Bro., Danville, Ky	10	10	10			
	Peter Gilcher, Danville, Ky	...	...	..	5	5	4
	Carrie Gilcher, Danville, Ky	...	...	...	5	5	4
	M. E. Harlan, Bryantsville, Ky	3	3				
	Annie S. Harlan, Danville	...	...	10	79	80	54
	J. W. Harlan, Danville, Ky	54	54	54			
	J. W. Harlan, Trustee, Danville	20	20	20			
	Samuel Harding, Danville	10	10	10	10	10	10
	Lucy W. Harding, Danville, Ky	12	12	12	12	12	4
	Mary M. Helm, Danville, Ky	...	...	...	5	5	4
	John A. Heron, Danville, Ky	10	10	10	10	10	7
	W. B. Holmes, Danville, Ky	5	5	5	5	5	4
	Mollie C. Hocker, Parksville, Ky	...	...	5	5	5	3
	Alma C. Irvine, Bedford, Ind	10	10	10	10	10	7
	G. N. Jean, Danville, Ky	10	10	10	10	10	10
	J. T. Lapsley, Danville, Ky	...	...	4	4		
	Mary Lillard, Danville	5	5				
137	M. D. Logan, Danville, Ky	10	10	10	10	10	
	Samuel Lyons, Danville, Ky	10	10	10	10	10	7
	J. W. Lynch, Wake Forest, North Car., after January 1897	...	5	5	5	5	3
	S. E. Markwell, Danville, Ky	5	5				
	S. D. Moore, Danville, Ky	10					
	Nick McDowell, Danville, Ky	10	10	10	10	10	7
	Hubert McGoodwin, Danville, Ky	10	10	20	20	20	13
	Henry Orman, Danville, Ky	...	...	...	...	5	4
	Jennie Prewitt, Danville	...	...	...	...	...	7
	Anna F. Quisenberry, Danville	47	47	47	47	47	31
	Robert T. Quisenberry, "	67	67	67	67	67	45
	John A. Quisenberry, Danville	143	136	136	136	117	66
	J. W. Redd, Danville, Ky	5					
	R. B. Rice, Hedgeville, Ky	5	5	5	5	5	3½
	John Robinson, Bryantsville, Ky	10	10	10	10	10	7
	Susie E. Roberts, Danville, Ky	5	18	8	8	8	4
	R. L. Salter, Danville, Ky	40	40	40	40	45	30
	Mrs. A. L. Sanders, Perryville, Ky	3	3	3	3	3	2
	Lou T. Scott, Perryville, Ky	1	1	1	1	1	1

*Figures enclosed in brackets are erased in copy.

	A.D. 1894.	A.D. 1895.	A.D. 1896.	A.D. 1897.	A.D. 1898.	A.D 1899
Benj. F. Tibbs, Danville, Ky	10	10	10	10	10	7
Trustees College of the Bible, Lexington, Ky	...	...	...	25	25	16
M. G. Weisiger, Danville, Ky	23	23	23	18		
John G. Weisiger, Danville, Ky	48	48	48	48	48	32
Emma G. Weisiger, Danville, Ky	7	7	7	7	7	4
A. G. Whitley, Danville, Ky	10	10	10	10	14	
Eugenia Whitley, Danville, Ky	10	10	10	10	10	6
138 Guy E. Wiseman, Danville, Ky	...	...	...	...	...	10
G. E. Wiseman, Danville, Ky	20	20	20	20	20	14
Nannie A. Wood, Perryville, Ky	...	1	1	1	1	1
B. T. Wood, Perryville, Ky	...	6	6	6	6	4
Mrs. J. T. Worthington, Danville, Ky	20	20	20	20	20	14
John W. Yerkes, Danville, Ky	40	50	40	15	15	
Amelia Yerkes, Danville, Ky	5	5	15	15	15	
Eugenia Young, Danville, Ky	...	...	...	3	3	2
Sallie Lee Young, Danville, Ky	...	...	...	6	6	4

These defendants finally state that John Cowan was a resident of and domiciled in Chattanooga, Tennessee, during 1894-1895-1896-1897 and 1898, and during all that time owned twelve shares of stock in the aforesaid Bank, that O. P. Cozatt was a resident of and domiciled in Wichita, Kansas, during 1894 and 1895, during all of which time he owned five shares of said stock: that Alma C. Irvine was a resident of and domiciled in Bedford, during 1894-1895-1896-1897-1898 and 1899, and during five years of said time owned 10 shares of said stock, and during 1899 owned seven shares of said stock that J. W. Lynch was a resident of and domiciled in Wake Forest, North Carolina, during 1897-1898 and 1899, two years of which time he owned five shares of said stock, and during 1899, owned three shares of said stock.

These defendants state that this Amended Answer and Response together with their Original Answer and Response
139 *together with their Original Answer and Response* constitute their entire Answer and Response to the Statement filed by the plaintiffs herein.

Wherefore these defendants pray as in their original Answer and Response, and will continue so to pray.

THE CITIZENS NATIONAL BANK,
M. J. FARRIS,
President of The Citizens National Bank,
J. A. QUISENBERRY,
Cashier of The Citizens National Bank,
By ROBERT T. QUISENBERRY,
Their Attorney, Danville, Kentucky.

Amended Answer and Response is endorsed on back in words and figures as follows:

1906 September 25, offered to be filed in open Court.
Att.

R. G. PRICE, *Clerk*.

1907, January 30th, filed in open court.
Att.

R. G. PRICE.

Reply to Amended Answer and Response is in words and figures as follows:

Reply.

The plaintiff for reply to the amended answer filed at this term of Court avers that the shares of stock of the residents of the State of Kentucky disclosed by said Amended Answer, as aggregating
140 in the year 1896-1473 and in the year 1897-1473 and in the year 1898-1473 and in the year 1899-990 are liable to taxation for County purposes in each of said years and the owners of same never listed any of them at any time for taxation and no tax has been or was paid on them to County of Boyle and the said 1473 shares was due by law to be listed on the 15th day of September 1896 and denies that five years had elapsed from said date aforesaid before the institution of these proceedings to require same to be listed.

Plaintiff avers that the County of Boyle is entitled to have the shares of stock of the resident share holders above mentioned and disclosed by the answer as residing in Kentucky, listed for taxation for County purposes for each of said years 1896-1897-1898-1899 as above set out and to have the penalty provided by law inflicted, and for interest at the rate of six per cent thereon from the 15th day of March 1901 upon the tax due until paid.

Wherefore the plaintiff prays as in this statement for the listing of said shares of stock for said residents of the State of Kentucky for taxation for County purposes for 1896-1897-1898 and 1899 and for interest on the tax due for each year from 15th day of March 1901 at rate of 6% per cent per annum until paid and for all proper orders and relief.

ROBERT HARDING AND
W. J. PRICE,
Att'ys for Plaintiff.

141 Said reply is endorsed on back in words and figures as follows:

1907 January 30th, filed in open Court.
Att.

R. G. PRICE, *Clerk*.

On the 31st day of January 1907, that being the Thursday the 16th day of said term of said Court, the following order was made in said action by the Court, and duly entered of record.

Order Filing Demurrer to Reply.

The defendant by attorney this day filed herein a general demurrer to the reply.

Said demurrer to the reply is in words and figures as follows:—

General Demurrer to Reply.

Before filing their rejoinder to the Plaintiffs Reply herein, the aforesaid defendants, "The Citizens National Bank; M. J. Farris, President of The Citizens National Bank, and J. A. Quisenberry, Cashier of The Citizens National Bank, Demur to said Reply, and say that it does not state facts sufficient to constitute a cause of action against them, or either of them, and that same does not state facts sufficient, upon which to base either,

First. A judgment authorizing said shares of stock to be listed for taxation;

Second. Or a judgment, or order inflicting a penalty;

Third. Or a judgment or order authorizing the recovery of any interest upon any tax alleged to be due, or other-
142 wise.

Wherefore &c.

THE CITIZENS NATIONAL BANK,
M. J. FARRIS,
President of The Citizens National Bank,
J. A. QUISENBERRY,
Cashier of The Citizens National Bank,
By ROBERT T. QUISENBERRY,
Their Att'y.

Said Demurrer to reply is endorsed on back in words and figures as follows:

1907 January 31st, filed in open Court.
Att.

R. G. PRICE, *Clerk.*
By W. H. ROBERTS, *D. C.*

On the same day of said court, the following order was made and duly entered of record.

The defendant by attorney, also filed its rejoinder.

Ordered that this case be now submitted to the Court on the General Demurrer to the Reply and upon the whole case.

Said Rejoinder is in words and figures as follows.

Rejoinder.

Without waiving their demurrer heretofore filed to the Reply herein, but still relying thereon, the aforesaid Defendants "The

Citizens National Bank; M. J. Farris, President of The Citi-
143 zens National Bank, and J. A. Quisenberry, Cashier of Citizens National Bank, for their rejoinder to the reply of the aforesaid Plaintiffs, filed at this January term of the aforesaid court, deny that the shares of stock of the residents of the State of Kentucky, as disclosed by their amended answer herein, or otherwise, are liable to taxation for county purposes, either during the years 1896-1897-1898 or 1899 or at all, and deny that the County of Boyle is entitled to have said shares of stock of the share-holders residing in Kentucky listed for taxation for county purposes either for the years 1896-1897-1898-1899, or at all, and deny that the County of Boyle is entitled to have any penalty inflicted either upon said shares or said share-holders or upon any, or either of the aforesaid Defendants, and deny that the County of Boyle has any right to collect any interest either from said share-holders, or from either of the aforesaid Defendants.

Wherefore these defendants pray as in their Original Answer and Response herein, and will ever so continue to pray.

THE CITIZENS NATIONAL BANK,
M. J. FARRIS,
President of The Citizens National Bank,
J. A. QUISENBERRY,
Cashier of The Citizens National Bank,
By ROBERT T. QUISENBERRY,
Their Att'y.

Said rejoinder is endorsed on back in words and figures as follows:

144 1907 January 31st, filed in open court.
Att.

R. G. PRICE, *Clerk.*
W. H. ROBERTS, *D. C.*

On the 2nd day of February, 1907 that being Saturday the 18th day of said term of said Court, the following order was made and duly entered of record.

It is hereby ordered that the Demurrer of the aforesaid defendants, The Citizens National Bank &c., to the Reply of the aforesaid Plaintiffs, which demurrer was filed on January 31st, 1907 be and the same is hereby overruled in so far as the same relates to and objects to a judgment authorizing said shares of stock to be listed for taxation and the infliction of a penalty to which ruling the said defendants excepts and that said demurrer be sustained in so far as the same objects to the recovery of interest upon any tax to which ruling said plaintiff- except.

On the 15th day of April, 1907, that being Monday the 1st day of said term of said court, the following order was made and duly entered of record.

The defendant by attorney this day tendered and offered to be

filed herein an Amended Rejoinder to the filing of which the plaintiff objected and the Court took time.

On the 20th day of April 1907, that being Saturday, the 6th day of said term of said court, the following order was made and
145 duly entered of record.

The amended rejoinder offered to be filed herein on April 15th, 1907 by the Citizens National Bank of Danville is, upon consideration of the Court, not allowed to be filed and the objection of the plaintiff to the filing of same is sustained to which ruling of the court the said Citizens National Bank excepts.

Judgment.

This cause being submitted to the Court upon the mandate and opinion of the Court of Appeals of Kentucky, and the statement of the plaintiff in writing filed in the office of the Clerk of the Boyle County Court by G. W. Coulter, Sheriff of Boyle County, and the answer of the Defendants thereto, and amended answer of defendant, and of the reply of the Plaintiff to the answer and amended answer and upon all the pleadings and exhibits on file and the proof contained in the Bill of Exceptions, filed in the Clerk's office of this Court and now upon file in this case, and upon the whole of the evidence, steps and matters contained in the bill of Exceptions, and the Court being advised adjudges that the shares of stock in The Citizens National Bank held and owned by the following named persons, all of whom are citizens and residents of the State of Kentucky, as disclosed *the* the amended answer of the Defendants herein, to be, in the following years, to-wit:

	1896.	1897.	1898.	1899.
146 Mrs. T. G. Armstrong.....	22 shares	22	22	14
C. T. Armstrong.....	13	13	13	10
C. R. Anderson.....	...	...	...	10
Anderson & Spillman.....	3	3	...	...
S. E. Bottom.....	20	30	30	20
J. L. Bruce.....	25	10	10	12
Carrie M. Bruce.....	5	5		
Mary C. Bruce.....	...	...	14	10
Homer Baughman.....	5	5	5	3
S. O. Baughman.....	10	10	10	
Mrs. M. I. Baughman.....	...	...	8	5
S. C. Brewer.....	3	3	3	2
T. A. Bradley.....	10	10	10	6
W. B. Burke..	10	10	10	6¾
Laura Broyles.....	4	4	4	3
Sarah Campbell.....	11	11	14	10
Gran Cecil's Trustee.....	10	10	10	7
C. P. Cecil.....	1	1	1	
Lizzie W. Cecil.....	10	10	10	7
Centre College.....	20	20	20	13

	1896.	1897.	1898.	1899.
J. A. Cheek	80	81	55	35
S. R. Cheek	5	5	5	3
F. J. Cheek	10	10	10	10
G. W. Chestnut	20	20	20	14
John J. Craig	75	75	75	50
John J. Craig, Trustee	40	40	40	26
A. G. Craig	10	10	10	7
Lettie Craig	10	10	10	7
147 Bettie Craig	10	10	10	7
Jacob Cozatt	5	5	5	20
George Cowan	25	25	25	
Sarah Cowan	15	15	15	35
Harry J. Cowan	10	10	10	7
Richard Cobb, Jr	10	10	10	10
L. L. Erwin	20	20	20	10
R. G. Evans	50	50	50	33
Josephine Evans	10	10	10	8
J. C. Fales	20	20	20	13
A. C. Fales	7	7	7	5
M. J. Farris	70	70	105	65
Fidelity Trust & Safety Vault Co., Trustee of Susan Redd	10	10	10	6
Fidelity Trust & Safety Vault Co., Trustee Mary B. Thomas	10	10	10	6
Bridget Fogarty	10	10	10	7
America Gentry	9	9	9	6
W. J. Gilmore	13	13	13	9
Mary P. Gill	10	10	10	7
Gilcher Bros	10			
Peter Gilcher	...	5	5	4
Carrie Gilcher	...	5	5	4
Annie S. Harlan	10	79	80	54
J. W. Harlan	54			
J. W. Harlan, Trustee	20			
Samuel Harding	10	10	10	10
Lucy W. Harding	12	12	12	4
148 Mary M. Helm	...	5	5	4
J. A. Heron	10	10	10	7
W. B. Holmes	5	5	5	4
Mollie C. Hocker	5	5	5	3
G. M. Jean	10	10	10	10
J. T. Lapsley	4	4		
M. D. Logan	10	10	10	
Samuel Lyons	10	10	10	7
Nick McDowell	10	10	10	7
Hubert McGoodwin	20	20	20	13
Henry Orman	...	...	5	4
Jennie Prewitt	...	...	...	7
Annie F. Quisenberry	47	47	47	31
Robert T. Quisenberry	67	67	67	45

	1896.	1897.	1898.	1899.
John A. Quisenberry	136	136	117	66
R. B. Rice	5	5	5	3½
John Robinson	10	10	10	7
Susie E. Roberts	8	8	8	4
R. L. Salter	40	40	45	30
Mrs. A. L. Sanders	3	3	3	2
Lou T. Scott	1	1	1	1
Benjamin F. Tibbs	10	10	10	7
Trustees College of the Bible	...	25	25	16
M. G. Weisiger	23	18		
John G. Weisiger	48	48	48	32
Emma G. Weisiger	7	7	7	4
149 A. G. Whitley	10	10	14	
Eugenia Whitley	10	10	10	6
Guy E. Wiseman	...	...	...	10
G. E. Wiseman	20	20	20	14
Nannie A. Wood	1	1	1	1
B. T. Wood	6	6	6	4
Mrs. J. T. Worthington	20	20	20	14
John W. Yerkes	40	15	15	
Amelia Yerkes	15	15	15	
Eugenia Young,	...	3	3	2
Sallie Lee Young	...	6	6	4

Aggregating for the years 1896, fourteen hundred and seventy-three (1473) shares, and for the year 1897, fourteen hundred and seventy-three (1473) shares and for the year 1898 fourteen hundred & seventy-three (1473) shares, and for the year 1899 nine hundred and ninety (990) shares, are liable for taxation for County purposes and have never been assessed or listed for taxation for county purposes, and were omitted to be listed by the Assessor of Boyle County for the year- 1896 and 1897, and 1898, and 1899, and no tax has been paid upon any of said shares of stock by any of the owners thereof, nor by any of the Defendants, nor by any one for county purposes, and it is now ordered and adjudged that said shares of stock be listed and assessed by the Clerk of the Boyle County Court in a book kept by him for said purpose in the name of said Bank and in the name of each of the share-holders, aforesaid, and as above set out
150 for the year 1896 as fourteen hundred and seventy-three (1473) shares at a cash valuation of said shares in the aggregate of $239,139.96, and at a cash valuation of $162.38 per share, upon which valuation the Sheriff will collect the sum in the aggregate of $408.46 or 27 cents and 7 mills per share, that being 17½ cents on the one hundred dollars of same levied for County purposes for said year, and for the year 1897 as fourteen hundred and seventy-three (1473) shares at the cash valuation in the aggregate of $239,460.70, and at a cash valuation of $162.56 per share, upon which valuation the Sheriff will collect the sum in the aggregate of $442.90, or 30 cents per share, that being 18½ cents on the one hundred dol-

lars of same levied for county purposes in said year and for the year 1898 as fourteen hundred and seventy-three (1473) shares at the cash valuation in the aggregate of $166,760.00 and at a cash valuation of $113.15 per share, upon which valuation the Sheriff will collect the sum in the aggregate of $541.97, or 36 cents and 7 mills per share, that being 32½ cents on the one hundred dollars of same levied for county purposes for said year, and for the year 1899 as nine hundred and ninety (990) shares at a cash valuation of $138,600.00, or at a cash valuation of $140.00 per share, upon which valuation the Sheriff will collect the sum of $537.47, in the aggregate, or 54 cents and 3 mills on the share, that being 39½ cents on the hundred dollars of same levied for county purposes for said year, and the Clerk of the Boyle County Court appeared in open Court with said book and entered said assessment in said book in
151 the name of said Bank, and the respective share-holders, above named, together with the date, location and number of shares of said stock, and valuation as fixed above for each of said years, and it is further adjudged that said Citizens National Bank, and its President, M. J. Farris and its Cashier, J. A. Quisenberry, pay to said Sheriff twenty per cent. upon each of said sums due said county for each of said years, as above stated, as a penalty provided by law for their failure to list said shares of stock and the costs of these proceedings in this Court and in the Boyle County Court, and the Clerk of the Boyle County Court is ordered to certify to the Sheriff and enter upon his books the said sum to be collected by him, as hereinbefore provided, for each of said years, and said Sheriff is ordered and directed to collect said sums and said penalty, as aforesaid, and for the purposes, aforesaid.

To all of which judgment the Defendants object and except and pray an appeal to the Court of Appeals which is granted.

Said judgments *is* endorsed on back in words and figures as follows:

1907 April, filed and recorded in O. B. 26, Page 280.
Att.

R. G. PRICE, *Clerk*,
By W. H. ROBERTS, *D. C.*

On the 23rd day of April, 1907, that being Tuesday the 8th day of the regular term 1907 of said court, the following order
152 was made in said action by the Court, and duly entered of record.

Order Directing Clerk to Copy Amended Rejoinder in this Record.

The Clerk of this Court is hereby directed to copy into any transcript of the record herein which may be ordered for the purpose of an appeal to the Court of Appeals, the Amended Rejoinder of the aforesaid defendant tendered and offered to be filed by them on a

former day of this term of Court and which the Court by its order refused to allow to be filed and to which ruling of the Court the defendants at the time duly excepted.

Said Amended Rejoinder above mentioned and referred to is in words and figures as follows:

Amended Rejoinder.

The aforesaid Defendants, The Citizens National Bank, M. J. Farris, President of The Citizens National Bank, and J. A. Quisenberry, Cashier of Citizens National Bank, for and Amendment to their Rejoinder herein, further state and allege,

1. That on September 15th, 1896 the capital of the aforesaid Bank was One hundred and fifty thousand dollars, its surplus fund was One Hundred Thousand Dollars, and its Undivided Profits were $3548.11/100, the three sums aggregating $253,548.11/100; that on said date, said Bank owned U. S. Government Bonds, whose face value was $150,000.00, and that all of the aforesaid sum
153 of $253,548.11 on said date was invested in said Bonds, save and except the sum of $103,548.11/100, and that all U. S. Government Bonds owned by State Banks in Kentucky, on said date were not taxable.

Second. That on September 15th, 1897 the Capital of the aforesaid Bank was $150,000.00, its surplus fund was $30,000.00; and its undivided profits were $1808.88/100; the three sums aggregating $181,808.11/100; that on said date said Bank owned U. S. Government Bonds, whose face value was $150,000.00, and that all of the aforesaid sum of $181,808.11/100, on said date was invested in said Bonds, save and except the sum of $31,808.11/100, and that all U. S. Government Bonds owned by State Banks in Kentucky, on said date, were not taxable, and were not taxed.

Third. That on September 15th, 1898 the Capital of the aforesaid Bank was $150,000.00, its Surplus Fund was $30,000.00 and its Undivided Profits were $7.40, the three sums aggregating $180,007.40 that on said date said Bank owned U. S. Government Bonds whose face value was $150,000.00; and that all of the aforesaid sum of $180,007.40 on said date was invested in said bonds save and except the sum of $30,007.40, and that all U. S. Government Bonds owned by State Banks in Kentucky, were exempt from taxation.

Fourth. That on September 15th, 1899, the capital of said Bank was $100,000.00 its Surplus Fund was $30,000.00, and its
154 Undivided Profits were $11802.50/100 the three aggregating $141,802.50; that on said date said Bank owned U. S. Government Bonds whose face value was $100,000.00, and that all of the aforesaid sum of $141,802.50 was invested in said Bonds on said date, save and except the sum of $41,802.50; and that U. S. Government Bonds owned by State Banks in Kentucky, were exempt from taxation on that date, and that all U. S. Government Bonds owned by State Banks in Kentucky, during the years 1896-1897-1898 and 1899 have been exempt from taxation.

Wherefore these Defendants pray as in their original Answer and Response, and will ever so continue to pray.

THE CITIZENS NATIONAL BANK,
M. J. FARRIS,
President of the Citizens National Bank,
J. A. QUISENBERRY,
Cashier of the Citizens National Bank,
By ROBERT T. QUISENBERRY,
Their Attorney, Danville, Kentucky.

Said Amended Rejoinder is endorsed on back in words and figures as follows:

1907, April 15th, tendered and offered to be filed in open Court.
Att. R. G. PRICE, *Clerk,*
By W. H. ROBERTS, *D. C.*

155 On the 22nd day of April 1907 the Defendant executed a supersedeas Bond in this action, which, together with the supersedeas issued on same, is in words and figures as follows:—

Supersedeas Bond.

(The Bond is only required to be signed by the Sureties.)

CITIZENS NATIONAL BANK OF DANVILLE, KY., Appellant,
against
COMMONWEALTH OF KENTUCKY, for the Use and Benefit of BOYLE COUNTY, Appellee.

Upon an Appeal from a Judgment of Boyle Circuit Court Rendered 20th Day of April, 1907.

Whereas, said appellants The Citizens National Bank M. J. Farris, President and J. A. Quisenberry, Cashier of The Citizens National Bank having taken an appeal from the Judgment of the Boyle Circuit Court rendered on the 20th day of April 1907, against them in favor of the appellee, for the sum of ($1930.80), Nineteen hundred and thirty and 80/100 dollars, and the Appellants desire to supersede the said judgment above mentioned:

Now, we, The Citizens National Bank of Danville, Ky., as principal and Robert T. Quisenberry surety, do hereby covenant
156 to an- with the Appellees, Commonwealth of Kentucky for use and benefit of Boyle County that the Appellants will pay to the Appellees all costs and damages that may be adjudged against the Appellants on the Appeal, and also that they will satisfy and perform the said judgment above stated, in case it shall be affirmed, and any judgment or order which the Court of Appeals may render, or order to be rendered, by the said Court, not exceeding in amount or value the judgment aforesaid.

Witness our hands, this 22nd day of April, 1907.

THE CITIZENS NATIONAL BANK.
ROB'T T. QUISENBERRY, *Surety.*

Subscribed and acknowledged in my presence and taken and approved by me. This April 22nd, 1907.

R. G PRICE,
Clerk, Boyle Circuit Court.

Supersedeas.

I do certify that an Appeal was granted by the above styled Court on the Twentieth day of April A. D. 1907 to the above named The Citizens National Bank; M. J. Farris, President of The Citizens National Bank; J. A. Quisenberry, Cashier of Citizens National Bank, from a judgment obtained therein against them on the Twentieth day of April 1907, by the Commonwealth of Kentucky, for the use and benefit of Boyle County, &c., for the sum of Nineteen Hundred thirty and 80/100 Dollars ($1930 80/100) together
157 with 20% penalty and costs, and that a bond to supersede said judgment has been executed before me,

Wherefore, The Commonwealth of Kentucky for the use and benefit of Boyle County, and the Commonwealth of Kentucky, and all others are commanded to stay proceedings on said judgment.

Witness my hand as Clerk of the Boyle Circuit Court on this the 22nd day of April A. D. 1907.

R. G. PRICE,
Clerk of the Boyle Circuit Court.

I, J. R. Dodds, Coroner of Boyle County, Ky., do hereby certify that on this the 22nd day of April A. D. 1907 I served the foregoing Supersedeas upon George Coulter, Sheriff of Boyle County, Ky., William J. Price, County Attorney of Boyle County, Ky., Reed S. Nichols, Judge of the County Court of Boyle County, Ky., John B. Nichols, Clerk of the County Court of Boyle County, Ky., and Robert Harding and William J. Price the Attorneys of the Appellees, the Commonwealth of Kentucky for the use and benefit of Boyle County, and the Commonwealth of Kentucky, by handing to and leaving with each of them a duplicate of the aforesaid Supersedeas. My fee for serving the same is One and 50/100 Dollars which has this day been paid by The Citizens National Bank.

In testimony whereof I have hereunto signed my name on this the 22nd day of April, A. D. 1907.

J. R. DODDS,
Coroner of Boyle Co., Ky.

158 *Schedule.*

For the purposes of an appeal to the Court of Appeals of Kentucky, the Clerk of the Circuit Court of Boyle County, Kentucky, is hereby directed to make a true, full, and complete transcript of the entire record and proceedings in the above entitled cause, as the same remains on file in his office.

ROBERT T. QUISENBERRY,
Attorney for the Defendants.

Said schedule is endorsed on back in words and figures as follows.

1907 May 29th, filed in Clerk's Office,
Att.:
R. G. PRICE, *Clerk.*

COMMONWEALTH OF KENTUCKY,
Boyle County, Boyle Circuit Court:

Clerk's Certificate.

I, R. G. Price, Clerk of the Boyle Circuit Court do hereby certify that the foregoing 81 pages contain a full, true and complete copy and transcript of the records and proceedings had in the Boyle Circuit Court in the above styled action as the same remain on file, and of record in my office.

Given under my hand as Clerk of the Court aforesaid this
159 12th day of June 1907.

R. G. PRICE,
Clerk of the Boyle Circuit Court.

160 And with said transcript the appellants filed a statement, *and* which is in words and figures as follows, to-wit:

161 *Statement.*

Court of Appeals of Kentucky.

THE CITIZENS NATIONAL BANK, M. J. FARRIS, President of The Citizens National Bank; J. A. QUISENBERRY, Cashier of The Citizens National Bank, Appellants,

vs.

COMMONWEALTH OF KENTUCKY, for Use and Benefit of BOYLE COUNTY, and THE COMMONWEALTH OF KENTUCKY, Appellees.

The judgment appealed from in the above entitled cause was rendered by the Circuit Court of Boyle County, Kentucky at its April 1907 term, and may be found on pages 68-69-70-71-72-73-74 and 75 of this record or transcript.

The Appellants neither wish any Summons issued herein, nor any warning order made.

ROB'T T. QUISENBERRY,
Attorney for Appellants.

162 Be it remembered that at a Court of Appeals held at the Capitol at Frankfort on the 3rd day of December, 1907, the following order was entered, to-wit:

Boyle.

THE CITIZENS NATIONAL BANK, etc.,
v.
COM'LTH, for Use, etc.

This case is ordered to be submitted.

And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 27th day of February, 1908, the following judgment was entered to-wit:

THE CITIZENS NATIONAL BANK, etc., Appellant,
vs.
COMMONWEALTH, for Use and Benefit, etc., Appellees.

Appeal from the Boyle Circuit Court.

The Court being sufficiently advised it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered certified to said court.

It is further considered that the appellees recover of the appellants their costs herein expended.

And on said date the Court delivered the following opinion:

163 Court of Appeals of Kentucky.

FEBRUARY 27, 1908.

THE CITIZENS NATIONAL BANK, etc., Appellants,
vs.
COMMONWEALTH, for Use and Benefit, etc., Appellees.

Appeal from Boyle Circuit Court.

Opinion of the Court by Judge Barker, Affirming.

This is the second appeal of this case; the opinion on the first, is to be found in 117 Ky., 946.

On the former appeal every question involved here, except the plea of the statute of limitation and a claim to a reduction from the value of the shares of stock of the shareholders taxed, the value of the bonds of the United States owned by the bank, was decided. In reversing the judgment direction was given in the opinion that, upon the return of the case to the circuit court, the defendant should be allowed, if it desired, to set up the statute of limitation, in so far as it could, in bar of the claim of the State for taxes. After the mandate was filed in the lower court the defendant
164 pleaded the five years' statute of limitation, and its plea was sustained to all of the years involved except 1896, 1897,

1898 and 1899, and judgment was given in favor of the Commonwealth taxing the shares of the stockholders of the bank retrospectively for these years.

No complaint is made that there was any error on the part of the trial court in applying the statute of limitation to the claim of the Commonwealth to tax the shares of stock for the various years involved. The several other questions which the learned counsel for appellant discusses in his brief, except the claim to have the United States bonds deducted from the value of the shares, were fully considered and settled in the opinion on the first appeal, and we shall content ourselves now with saying that, whatever was settled on the former appeal is the law of the case on this appeal, and not open to reargument.

When the case was ready for final trial, the plaintiff tendered an amended rejoinder, in which it was set forth that a part of the bank's capital and surplus was invested in United States bonds, and that United States bonds were allowed as an exemption from taxation in favor of the State banks, and asked that the amount of those held by it be deducted each year in applying the tax levies. Upon the former appeal, and also in the case of The Citizens
National Bank of Lebanon *v.* Commonwealth, 25 Ky. Law
165 Rep., 2254, we held, in applying the statute of 1900, which is involved here, that the stockholders in national banks are entitled to precisely the same exemption as State banks; and undoubtedly, if the exemption had been properly pleaded and at the proper time, it would have been allowed. The claim of exemption should have been set up in the answer instead of the rejoinder, as the reduction claimed was a defense *pro tanto* to the cause of action set up in the petition. The trial judge is invested by law with wide discretion in the matter of permitting amendments, and we have seldom interfered with the exercise of this discretion, and never except upon sufficient cause for our action. No reason is given in the record for the failure to claim the exemption in proper time, and we, therefore, do not feel at liberty, without cause shown, to overrule the order of the trial court in refusing to allow the tendered amendment to be filed: first, because it came too late, and second, because it was not contained in the answer or an amended answer.

There being no sufficient reason shown for reversing the judgment of the trial court, it is affirmed.

ROB'T HARDING,
W. J. PRICE,
For Appellees.

ROB'T T. QUISENBERRY,
For Appellants.

166 Be it remembered that afterwards on the 25th day of March, 1908, there was filed in the office of the Clerk of this Court an assignment of errors, which is in words and figures as follows, to-wit:

167 *Assignment of Errors.*

Court of Appeals of the Commonwealth of Kentucky.

THE CITIZENS NATIONAL BANK, M. J. FARRIS, President of The Citizens National Bank; J. A. QUISENBERRY, Cashier of The Citizens National Bank, Plaintiffs in Error,

vs.

COMMONWEALTH OF KENTUCKY, for the use and Benefit of BOYLE COUNTY, THE COMMONWEALTH OF KENTUCKY, Defendants in Error.

And now comes The Citizens National Bank; M. J. Farris, President of The Citizens National Bank; J. A. Quisenberry, Cashier of The Citizens National Bank, the aforesaid Plaintiffs in Error, who were the Appellants in the above Styled Court in the action of The Citizens National Bank; M. J. Farris, President of the Citizens National Bank, J. A. Quisenberry, Cashier of The Citizens National Bank, Appellants *vs.* Commonwealth of Kentucky for the Use and Benefit of Boyle County, The Commonwealth of Kentucky, Appellees, and said Plaintiffs in error, by their attorney Robert T. Quisenberry, allege that in the last above entitled action there was drawn in question the validity of the provisions of an Act of the General Assembly of the Commonwealth of Kentucky, relating to the taxation of shares of stock in National Banks, approved March 21-1900, and commonly known and designated as the Act of March 21-1900 on the ground of the provisions thereof being repugnant to the Constitution and laws of the United States, and they respectfully submit that in the record, decision, and final judgment of the Court of Appeals of the Commonwealth of Kentucky, in the last above styled action, which court is the highest Court in the Commonwealth of Kentucky, either in law or equity, in which a decision in said suit could be had, there is manifest error in this to wit:

1. The Act of March 21-1900 violates, and is repugnant to that part of section 10 of Article 1 of the U. S. Constitution, which is, "No state shall pass any law impairing the obligation of contracts" by imposing a tax on shares of stock in National banks, from the date of its passage, March 21-1900 back to 1892, and creating a lien, and liability on said shares, for a tax, in the hands of innocent purchasers thereof, for value, and without notice, thus impairing those rights, immunities, and privileges enjoyed in the ownership of said shares prior to March 21-1900, and to the extent of the tax, impairing the value of the shares, and the decision in said action was in favor of the validity of said Act.

2. The act of March 21-1900 is repugnant to section 1 of the 14th. amendment of the U. S. Constitution, which is "Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law" in that it requires the President and

Cashier of National Banks to list and assess the shares of Stock of said banks with the assessor without notice to the owner of said shares, and without opportunity given him to be heard as to the valuation placed thereon for the purposes of taxation, and the decision and final judgment in said action is in favor of the validity of said Act.

3. The Act of March 21-1900 is repugnant to section 5210 of the U. S. Revised Statutes, in that it requires the President and Cashier of National Banks to list the Shares of Stock therein with the assessing officers authorized to assess real estate, when said section 5210 simply provides that the "President and Cashier of every National Banking Association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the Association, and the number of Shares held by each, in the office where its business is transacted."

168 4. The Act of March 21-1900 provides "that the shares of stock in each national bank in Kentucky, shall be subject to taxation for the purposes of each County, City, Town, and Taxing District, in which the Bank is located", which provision is repugnant to that clause of section 5219 of the U. S. Revised Statutes, which restricts the taxation of these shares to those taxes imposed by authority of the State within which the association is located."

5. By the terms of *of* the act of March 21-1900, "the President and Cashier of the Bank shall list the shares of stock with assessing officers authorized to assess real estate for taxation, and the bank shall be and remain liable to the State, County, City, Town, and District, for the taxes upon said shares of stock, and all assessments of shares of stock contemplated by this act shall be entered upon the asses-or's book, certified and reported by the assessing officers as assessments of real estate are entered, certified and reported, and the same shall be certified to the proper collecting officers for collection as assessments of real estate are certified for collection of taxes thereon", which provisions are repugnant to those of section 5219 of the U. S. Revised Statutes, which require that "Shares of Stock in National Banks for the purposes of taxation shall be included in the valuation of the personal property of the owner or holder of such Shares", and shall therefore necessarily be assessed and taxed in the name of such owner or holder, whereas said act requires the shares to be assessed and taxed in the name of the bank, *in solido*, and the bank is made liable for such tax thereby taxing the franchise, capital and assets of the bank itself, and not the shares of stock therein, and the Decision and final judgment of the Court of Appeals of Ky. is in favor of the validity of said Act of March 21-1900.

6. The Act of March 21-1900 is repugnant to that clause of section 5219 of the U. S. Statutes which requires "that the taxation of said shares shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of each State, said act requiring the assessment of said shares to be made as assessments of real estate.

7. Section 3, of the Act of March 21-1900 is peculiarly repugnant to section 5219 of the U. S. Revised Statutes, because the right and privilege given the States thereby, can be exercised by the State only after the legislature thereof has enacted a law in harmony with its provisions, declaring shares of stock in National Banks subject to taxation, and not before; it is also repugnant to section 5219 because its enforcement imposes a tax upon the franchise, capital, and assets of the bank, which the bank must pay, as the ownership of said shares has changed many times over from 1900 back to 1892.

8. The Act of March 21-1900 is repugnant to section 5219 U. S. Revised Statutes, because it makes the tax upon shares of stock in national banks the debt of the bank, and renders its franchise, capital and assets liable to seizure and sale under execution and distraint therefor, as real estate is subject to levy and sale for taxes, when by the terms of section 5219, the tax upon these shares is the personal debt of the owner or holder of said shares.

9. The Act of March 21-1900 is repugnant to section 5219 U. S. Revised Stat., in that it provides for assessing shares of stock in national banks and collecting taxes thereon for a period of time anterior to the date of its passage and approval.

10. The Decision and final judgment of the Court of Appeals of Ky., herein is repugnant to section 5219 U. S. Statutes, in that it holds that said section 5219 is self operative in Ky. without the aid of an act of the General Assembly of the Commonwealth of Ky. declaring shares of stock in National Banks therein taxable, and defining the manner and place of taxing the same, and restricting the taxes laid thereon to a rate not greater than is assessed upon other moneyed capital in the hands of individual citizens of the State, and providing that shares of non-residents shall be taxed in the city or town where the bank is located, and not elsewhere.

169 11. The Decision and final judgment of the Court of Appeals of Ky. is repugnant to the Decision of the U. S. Supreme Court in the case of Owensboro National Bank *vs.* Owensboro, 173 U. S. 664, in that said decision and final judgment of said Court of Appeals decides and adjudges that "the act of *of* March 21-1900, did not therefore make that taxable which was not taxable before, but simply provided another mode for assessment of the shares of stock and the payment of the taxes."

12. Section 4241 of the Ky. Statutes, upon which this proceeding was based, and prosecuted through the courts of Ky., and which the Court of Appeals of Ky. declared valid as so invoked and used and applied, by its decision and final judgment herein, is section 3 of article 13 of Chapter 103 of the Acts of the General Assembly of the Commonwealth of Ky., for the years 1891-1892 & 1893, and became a law on November 11th, 1892, without the Governor's signature, and as herein invoked and applied is repugnant to section 1 of the 14th. amendment of the U. S. Constitution; sections 5210 & 5219 of the U. S. Revised Statutes,

and to the principles laid down by the U. S. Supreme Court in the Decision of Owensboro National Bank *vs.* Owensboro 173 U. S. 664.

Said section 4241 of the Ky. Statutes is in these words. "It shall be the duty of the sheriff, or auditor's agent to cause to be listed for taxation all property omitted, or any portion of property omitted by the assessor, board of supervisors, board of valuation and assessment, or railroad commission, for any year or years. The officer proposing to have such property assessed shall file in the Clerk's office of the County in which the property may be liable to assessment, a statement containing a description and value of the property proposed to be assessed, and the value of the corporate franchise, if any, and the name and place of residence of the owner, his agent, or attorney, or person in possession of the property, and the year or years for which the property is proposed to be assessed. Within five years after the filing of such statement the clerk of the Court shall issue a summons against the owner to show cause before the next regular term of the County Court which does not commence within five days after service of such summons, why such property or corporate franchise, if any, shall not be assessed at the value named in the statement filed. The summons shall be executed by the sheriff of the County by delivering a copy thereof to the owner, if in the County, if not, then to his agent attorney or person in possession of the property. At the next regular term of the County Court after notice has been served five days, if it shall appear to the Court that the property is liable for taxation, and has not been assessed, the court shall enter an order fixing the value thereof at its fair cash value, estimated as is required by law if not liable, he shall make an order to that effect. From so much of the order of the Court deciding whether or not the property is liable to assessment, either party may appeal, as in other civil cases, except that no appeal bond shall be required where the court decides that the property is not liable to assessment or taxation. If the Court shall decide that the property is liable to assessment, the Clerk of the County Court shall certify to the auditor of public accounts and the sheriff a description of the property and the amount of the assessment for taxation, together with the amount of penalty and cost of assessment. All persons owning property which may be assessed as herein provided shall, in addition to the taxes, pay a penalty of twenty per centum on the amount of the taxes due and cost of assessment, except where such property shall have been duly listed by the owner thereof. The taxes and penalties shall be collected and accounted for as other taxes and penalties are required to be collected. As compensation for his services in causing such property to be assessed, the officer filing his statement shall be entitled to the penalty, which shall be paid to him after the full amount of taxes shall have been collected. The County Clerk shall enter all such assessments in a book to be kept for that purpose, showing the date of the assessment, the name of the person against whom the assessment is made, the location and

quantity of the property assessed, the value fixed thereon; and the officer collecting the tax shall, when the same is paid, notify the clerk of its payment, which payment shall be noted by the Clerk opposite the entry of such assessment."

170 13. This proceeding which the Court of Appeals of the Commonwealth of Ky. declares by its decisions and final judgment to be valid, is neither against the Shareholder, nor the Shares of Stock, but is a direct attack upon the capital and assets of the bank, which is repugnant to section 5219 U. S. Revised Statutes.

14. It is not a new remedy invoked, but the old one provided by section 4241 of the Ky. Statutes, which became a law Nov. 11th, 1892, and by its machinery the new interest sought to be conferred by section 3 of the act of March 21-1900 is attempted to be enforced contrary to the principles laid down in Owensboro National Bank *vs.* Owensboro, 173 U. S. 664.

15. The Decision and final judgment of the Court of Appeals of Ky. is erroneous in that it fails to reverse the final judgment of the Circuit Court of Boyle County, Ky., and fails to adjudge that this action be dismissed, and that the Plaintiffs in error herein be awarded their costs.

16. Said Act of March 21-1900 permits an illegal discrimination against stock in National Banks as compared with other moneyed capital in the hands of individual citizens, contrary to the provisions of the Federal Statute authorizing its taxation.

17. The Decisions herein of the Court of Appeals of Ky., authorizing the deduction of U. S. Bonds owned by National Banks from assessment of the property of National Banks is in contravention of section 5219 of the U. S. Revised Statutes.

18. The Decision and final judgment of the Court of Appeals of Ky. is repugnant to section 5219 of the U. S. Revised Statutes, because no law existed on the statute book of Ky., from 1892 to March 21-1900, declaring Shares of Stock in National Banks taxable, and said Decisions declare that said Shares of Stock were taxable under *"General Law,"* and not according to terms of said section.

19. Section 3 of the Act of March 21-1900 is peculiarly repugnant to section 5219 of the United States Revised Statutes, in that it is retro-active by authorizing assessment of shares of stock in National Banks and the collection of taxes thereon for an Indefinite Period anterior to its passage.

Wherefore The Citizens National Bank; M. J. Farris, President of The Citizens National Bank; J. A. Quisenberry, Cashier of The Citizens National Bank, the Plaintiffs in error herein pray that the Decision and final judgment of the Court of Appeals of the Commonwealth of Ky. be reversed, and that said Court be ordered and directed to enter judgment reversing the judgment of the Boyle Circuit Court, and directing said Circuit Court to enter an order dismissing this action, and proceeding, and awarding these Plain-

tiffs in error their costs herein by them in this whole proceeding expended.

THE CITIZENS NATIONAL BANK,
M. J. FARRIS,
President of the Citizens National Bank,
J. A. QUISENBERRY,
Cashier of the Citizens National Bank,
By ROBERT T. QUISENBERRY,
Their Attorney, of Danville, Ky.

Filed Mar. 25, 1908.

NAPIER ADAMS, *C. C. A.*

171 And afterwards there was filed in the office of the clerk of this court a petition for a writ of error from the United States Supreme Court to the Court of Appeals of the Commonwealth of Ky., which petition is as follows:

172 *Petition for Writ of Error from the U. S. Supreme Court to the Court of Appeals of the Commonwealth of Kentucky.*

Court of Appeals of the Commonwealth of Kentucky.

THE CITIZENS NATIONAL BANK; M. J. FARRIS, President of The Citizens National Bank; J. A. QUISENBERRY, Cashier of The Citizens National Bank, Appellants,

vs.

COMMONWEALTH OF KENTUCKY, for the Use and Benefit of BOYLE COUNTY, THE COMMONWEALTH OF KENTUCKY, Respondents.

To the Honorable Ed. C. O'Rear, Chief Justice of the Court of Appeals of the Commonwealth of Kentucky:

Now come The Citizens National Bank, M. J. Farris, President of The Citizens National Bank, J. A. Quisenberry, cashier of The Citizens National Bank the above named Appellants, by their attorney Robert T. Quisenberry, and complain and allege that each of them is a citizen of the State of Kentucky, and of the United States; that they were the Appellants in that certain action heretofore pending before the above entitled court, under the style of The Citizens National Bank, M. J. Farris, President of The Citizens National Bank; J. A. Quisenberry, Cashier of The Citizens National Bank, Appellants *vs.* The Commonwealth of Kentucky for the Use and Benefit of Boyle County, The Commonwealth of Kentucky, Appellees, and that in the last above styled cause on the 27th day of February 1908, final judgment was rendered against your petitioner by the Court of Appeals of the Commonwealth of Kentucky, that being the highest Court of law or in equity in the State of Kentucky, in which a

decision in this last aforesaid action could be had, wherein was drawn in question the validity of the provisions of Chapter 23 of the Acts of the General Assembly of the Commonwealth of Kentucky (commonly known and designated as the act of March 21-1900, passed at a regular session of the General Assembly, which was begun and held on Tuesday the second day of January 1900, and approved March 21-1900; on the ground of its being repugnant to the Constitution and laws of the United States, and which act makes the shares of stock in National Bank subject to taxation for all State purposes and for the purposes of each County, City Town and Taxing District in which the bank is located; and provides that it shall be the duty of the President and Cashier of the bank to list the shares of stock of the bank with the assessing officer authorized to assess real estate for taxation and that the bank shall be and remain liable to the State, City, Town, County, and Taxing District for the taxes upon said shares; that any of said shares of stock which have not been listed for taxation for any of said purposes under levy or levies of any year or years since the adoption of the revenue law of 1892 it shall be the duty of the President and Cashier to list the same for taxation under said levy or levies; that assessments of shares of stock contemplated by said act shall be entered upon the assessor's books, certified and reported by the assessing officers as assessments of real estate are entered certified and reported, and the same shall be certified to the proper collecting officers for collection as assessments of real estate are certified for collection of taxes thereon; that the assessments of said shares of stock and collection of taxes thereon, as contemplated by this act, may be enforced as assessments of real estate, and collection of taxes thereon, may be enforced and which decision was in favor of the validity of the aforesaid act, and all of its provisions, and it was thereby adjudged that neither said act of March 21, 1900, nor any of its provisions, was either in contravention of, in conflict with, or repugnant to, either the provisions of section ten of article one of the Constitution of the United States, or of section one of the fourteenth amendment thereof, or of section 5210 and 5219 of the Revised Statutes of the United States, and that neither said act, nor any of its provisions was in any regard
173 repugnant either to the Constitution of the United States, or of any of the laws of the United States, all of which appears in the record, opinions and decisions and final judgment of said Court of Appeals of the Commonwealth of Kentucky. Whereby manifest error has happened and been committed to the great damage of your Petitioners, the assignment of which Errors is filed herewith.

Wherefore your Petitioners pray for the allowance of a Writ of Error from the Supreme Court of the United States to the Court of Appeals of the Commonwealth of Kentucky, and the Judges thereof, to the end that the record in said matter may be removed into the Supreme Court of the United States and the Error complained of by your Petitioners may be examined and corrected and said judgment

reversed, and your Petitioners discharged, and your Petitioners will ever pray.

THE CITIZENS NATIONAL BANK,
M. J. FARRIS,
President of The Citizens National Bank.
J. A. QUISENBERRY,
Cashier of The Citizens National Bank.
By ROBERT T. QUISENBERRY,
Their Attorney, Danville, Kentucky.

Filed Mar. 25, 1908.
NAPIER ADAMS, *C. C. A.*

174 And afterwards on the 25th day of March, 1908, there was filed in the office of the clerk of this court, order allowing writ of error and approving bond, and which order is as follows:

175 *Order Allowing Writ of Error and Approving Bond.*

Court of Appeals of the Commonwealth of Kentucky.

THE CITIZENS NATIONAL BANK; M. J. FARRIS, President of The Citizens National Bank; J. A. QUISENBERRY, Cashier of The Citizens National Bank, Appellants,

vs.

COMMONWEALTH OF KENTUCKY, for the Use and Benefit of BOYLE COUNTY, THE COMMONWEALTH OF KENTUCKY, Respondents.

The above entitled matter coming on to be heard upon the Petition of the Appellants therein, The Citizens National Bank, M. J. Farris, President of The Citizens National Bank, and J. A. Quisenberry, Cashier of The Citizens National Bank, for a writ of Error from the Supreme Court of the United States to the Court of Appeals of the Commonwealth of Kentucky, and upon examination of said Petition and the record in said matter, and desiring to give the Petitioners an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter,

It is therefore ordered that a writ of error be, and is hereby allowed to this Court of Appeals of the Commonwealth of Kentucky, from the Supreme Court of the United States, and that said writ of error is to operate as a supersedeas, and that the bond for Three Thousand Dollars ($3000.00) presented by the aforesaid Petitioners, be and the same is hereby approved.

ED. C. O'REAR,
Chief Justice of the Court of Appeals of the Commonwealth of Kentucky.

Dated at Frankfort, Kentucky, this the 25th day of March A. D. 1908.
Filed Mar. 25, 1908.
NAPIER ADAMS, *C. C. A.*

176 And afterwards on the 25th day of March, 1908, there was filed in the office of the clerk of this court a writ of error, and which is as follows:

177 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the Court of Appeals of the Commonwealth of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the Commonwealth of Kentucky, before you, or some of you, being the highest Court of Law or Equity of the said State in which a decision could be had in the said suit between The Citizens National Bank, M. J. Farris, President of the Citizens National Bank; J. A. Quisenberry, Cashier of the Citizens National — Appellants *vs.* The Commonwealth of Kentucky for the Use and Benefit of Boyle County, The Commonwealth of Kentucky, Appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution Treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said The Citizens National Bank, M. J. Farris, President of The Citizens National Bank, J. A. Quisenberry, cashier of The Citizens National Bank, as by their complainant appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25 day of March, in the year of our Lord one thousand nine hundred and eight.

[Seal 6th Circuit Court Eastern Ky. Dis., U. S. America.]

CHAS. N. WIARD,
Clerk of the Circuit Court of the United States for the Eastern District of Kentucky, at Frankfort.

Allowed by

ED. C. O'REAR,
Chief Justice of the Court of Appeals

178 And afterwards on the 25th day of March, 1908, there was filed in the office of the clerk of this court a supersedeas bond, and which bond is as follows:

Know all men by these presents, that we, The Citizens National Bank, M. J. Farris, President of the Citizens National Bank, J. A. Quisenberry, Cashier of The Citizens National Bank, as principals, and Robert T. Quisenberry, as surety, are held and firmly bound unto The Commonwealth of Kentucky for the use and benefit of Boyle county, The Commonwealth of Kentucky, in the full sum of Three Thousand Dollars, ($3000.00), to be paid to the said Commonwealth of Kentucky for the use and benefit of Boyle county, and The Commonwealth of Kentucky, and their certain attorney, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our Seals and dated this the 25 day of March A. D., 1908.

Whereas lately at a term of the Court of Appeals of the Commonwealth of Kentucky, in a suit depending in said Court, between The Citizens National Bank: M. J. Farris, President of The Citizens National Bank, J. A. Quisenberry, Cashier of The Citizens National Bank, Appellants, *vs.* The Commonwealth of Kentucky for
179 the Use and Benefit of Boyle county, The Commonwealth of Kentucky, Appellees, a decision and final judgment was rendered against the said The Citizens National Bank, M. J. Farris, President of The Citizens National Bank, and J. A. Quisenberry, Cashier of The Citizens National Bank, and the said The Citizens National Bank, M. J. Farris, President of the Citizens National Bank, and J. A. Quisenberry, Cashier of the Citizens National Bank, having obtained a Writ of Error, and filed a copy thereof in the Clerk's office of the said Court of Appeals of Kentucky, to reverse the judgment in the aforesaid suit, and a Citation directed to the Commonwealth of Kentucky for the Use and Benefit of Boyle county, and the Commonwealth of Kentucky, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington within thirty days from date thereof.

Now the conditions of the above obligation is such, that if the said The Citizens National Bank, M. J. Farris, President of The Citizens National Bank and J. A. Quisenberry, Cashier of The Citizens National Bank, shall prosecute said Writ of Error to effect and answer all damages and costs if they shall fail to make their plea good then the above obligation to be void; else to remain in full force and virtue.

THE CITIZENS NATIONAL BANK,
By M. J. FARRIS, *President.*
M. J. FARRIS,
President of The Citizens National Bank.
180 J. A. QUISENBERRY,
Cashier of The Citizens National Bank.
ROBERT T. QUISENBERRY, *Surety.*

Filed Mar 25, 1908.
NAPIER ADAMS, *C. C. A.*

Signed, Sealed and Delivered in the presence of
H. L. BRIGGS.
E. W. COOK.

Approved by

ED. C. O'REAR,
Chief Justice of the Commonwealth of Kentucky.

181 And afterwards on the 30th day of March, 1908, there was filed in the office of the clerk of the Court of Appeals of Kentucky the original Citation, and which is hereto attached and is as follows:

182 United States of America to the Commonwealth of Kentucky, for the Use and Benefit of Boyle County, the Commonwealth of Kentucky, Defendants in Error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof pursuant to a Writ of Error filed in the Clerk's Office of the Court of Appeals of the Commonwealth of Kentucky, wherein The Citizens National Bank, M. J. Farris, President of the Citizens National Bank and J. A. Quisenberry, Cashier of The Citizens National Bank are Plaintiffs in Error and you are Defendants in Error, to show cause if any there be, why the judgment rendered against the said Plaintiffs in Error as in said Writ of Error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Ed. C. O'Rear, Chief Justice of the Court of Appeals of the Commonwealth of Kentucky, this 25th day of March in the year of our Lord one thousand nine hundred and eight.

ED. C. O'REAR,
Chief Justice of the Court of Appeals of the Commonwealth of Kentucky.

STATE OF KENTUCKY,
County of Boyle, ss:

I, William S. Lawwill, hereby make oath and certify that I am over the age of sixteen years, that I am neither a party to, nor interested in the action of The Citizens National Bank; M. J. Farris, President of The Citizens National Bank; J: A. Quisenberry, Cashier of The Citizens National Bank; Plaintiffs in Error *vs.* The Commonwealth of Kentucky for the Use and Benefit of Boyle County, The Commonwealth of Kentucky Defendants in Error; that on the 28th day of March 1908, I delivered a true copy of the within citation to each of the following persons, namely to Emmett V. Puryear, the presiding Judge of the County Court of Boyle County Kentucky; to George W. Coulter, Sheriff of Boyle County, Kentucky; to William J. Price, County Attorney of Boyle County, Kentucky, and one of the Attorneys of record herein for the Defendants in Error; and that on the 28th day of March 1908, I delivered a true copy of the

within citation to Robert Harding, one of the attorneys of record herein for the Defendants in Error. I further make oath and state that this endorsement is true.

WILLIAM S. LAWWILL.

Subscribed and sworn to before me a Notary Public, on this the 28th day of March A. D. 1908. My Notarial Commission expires Jan'y 17th, 1912.

[Seal of J. M. Wallace, Notary Public, Boyle County, Ky.]

J. M. WALLACE,
Notary Public, Boyle County, Kentucky.

[Endorsed:] Filed Mar. 30, 1908. Napier Adams, C. C. A.

183 COMMONWEALTH OF KENTUCKY,
Court of Appeals:

I, Napier Adams, Clerk of the Court of Appeals of the Commonwealth of Kentucky, do hereby certify that the foregoing pages contain a full, true and complete copy and transcript of the records and proceedings had in the Court of Appeals of the Commonwealth of Kentucky, including the opinion of said court, in the action of The Citizens National Bank, M. J. Farris, President of The Citizens National Bank, J. A. Quisenberry, Cashier of The Citizens National Bank, appellants, *vs.* Commonwealth of Kentucky for the use and benefit of Boyle county, The Commonwealth of Kentucky, etc., appellees, as full and complete as the same remain on file, and of record in my office which transcript I herewith transmit in pursuance of the command of the writ of error thereto attached. I also further certify that the foregoing pages contain a full, true and complete copy and transcript of the assignment of errors, with prayer for reversal; the petition for writ of error; the order allowing the writ of error, and approving the bond, and the bond.

I also further certify that the original citation with the affidavit of service thereof, endorsed thereon, and the original writ of error are hereto attached and herewith returned.

In testimony whereof, I have hereunto set my hand and
184 affixed the seal of said court. Done at Frankfort, Kentucky on this the 9th day of April, A. D. 1908.

[Seal Kentucky Court of Appeals.]

NAPIER ADAMS,
Clerk of the Court of Appeals of the Commonwealth of Ky.

Endorsed on cover: File No. 21,125. Kentucky Court of Appeals. Term No. 135. The Citizens National Bank, M. J. Farris, President of the Citizens National Bank, and J. A. Quisenberry cashier of the Citizens National Bank, plaintiffs in error, *vs.* The Commonwealth of Kentucky, for the use and benefit of Boyle county, and The Commonwealth of Kentucky. Filed April 20th, 1908. File No. 21,125.

[illegible]
FILED
NOV 22 1909
JAMES H. McKENNEY,
[illegible]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 135.

THE CITIZENS NATIONAL BANK, M. J. FARRIS, PRESIDENT OF THE CITIZENS NATIONAL BANK, AND J. A. QUISENBERRY, CASHIER OF THE CITIZENS NATIONAL BANK, PLAINTIFFS IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY FOR THE USE AND BENEFIT OF BOYLE COUNTY AND THE COMMONWEALTH OF KENTUCKY.

BRIEF FOR PLAINTIFFS IN ERROR.

ROBERT TAYLOR QUISENBERRY,
Attorney for the Citizens National Bank,
M. J. Farris, President; J. A. Quisenberry, Cashier,
Plaintiffs in Error.

NOVEMBER 18, 1909.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 135.

THE CITIZENS NATIONAL BANK, M. J. FARRIS, PRESIDENT OF THE CITIZENS NATIONAL BANK, AND J. A. QUISENBERRY, CASHIER OF THE CITIZENS NATIONAL BANK, PLAINTIFFS IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY FOR THE USE AND BENEFIT OF BOYLE COUNTY AND THE COMMONWEALTH OF KENTUCKY.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

This proceeding was filed on March 15, 1901, in the county court of Boyle County, Kentucky, against the Citizens National Bank, its president and cashier, for the purpose of having the shares of stock of said bank listed and assessed for county taxes alleged to be due Boyle County, Kentucky, for the years 1892, 1894, 1895, 1896, 1897, 1898, and 1899, the bank being located and doing business in said county. It is based upon and follows the provisions of section 4241 of the Kentucky Statutes, enacted November 11, 1892, which section is as follows:

"It shall be the duty of the sheriff, or auditor's agent, to cause to be listed for taxation all property omitted, or any portion of property omitted by the assessor, board of supervisors, board of valuation, and assessment or railroad commission, for any year or years. The officer proposing to have such property assessed shall file in the clerk's office of the county in which the property may be liable to assessment, a statement containing a description of the property proposed to be assessed, and the value of the corporate franchise, if any, and the name and place of residence of the owner, his agent, or attorney, or person in possession of the property, and the year or years for which the property is proposed to be assessed within five years after the filing of such statement, the clerk of the court shall issue a summons against the owner to show cause before the next regular term of the county court, which does not commence within five days after service of such summons, why such property, or corporate franchise, if any, shall not be assessed at the value named in the statement filed. The summons shall be executed by the sheriff of the county by delivering a copy thereof to the owner, if in the county, if not, then to his agent, attorney, or person in possession of the property. At the next regular term of the county court after the notice has been served five days, if it shall appear to the court that the property is liable for taxation and has not been assessed, the court shall enter an order fixing the value thereof at its fair cash value estimated as is required by law; if not liable, he shall make an order to that effect. From so much of the order of the court deciding whether or not the property is liable to assessment, either party may appeal, as in other civil cases, except that no appeal bond shall be required where the court decides that the property is not liable to assessment or taxation. If the court shall decide that the property is liable to assessment, the clerk of the court shall certify to the auditor of public accounts, and the sheriff a description of the property, and the amount of the assessment for taxation, together with the amount of penalty and cost of assessment. All persons owning property which

may be assessed as herein provided shall, in addition to the taxes, pay a penalty of twenty per centum on the amount of the taxes due and cost of assessment, except where such property shall have been duly listed by the owner thereof. The taxes and penalties shall be collected and accounted for as other taxes and penalties are required to be collected. As compensation for his services in causing such property to be assessed, the officer filing his statement shall be entitled to the penalty, which shall be paid to him after the full amount of taxes shall have been collected.

"The county clerk shall enter all such assessments in a book to be kept for that purpose showing the date of the assessment, the name of the person against whom the assessment is made, the location and quantity of the property assessed, the value fixed thereon; and the officer collecting the tax shall when the same is paid, notify the clerk of its payment, which payment shall be noted by the clerk opposite the entry of such assessment" (Rec., pp. 86 and 87).

This proceeding undertakes, by the aid of section 4241, to enforce the provisions of the act of March 21, 1900, which act is as follows:

"Whereas the Supreme Court of the United States has lately decided that article three (3), chapter 103 of the acts of 1891-1892-1893, is void, and of no effect in so far as the same provides for taxation of the franchise of national banks, in consequence of which decision there is not now and has not been since adoption of said article in 1892, any adequate mode of taxing national banks, while State banks are now and have been ever since 1892, taxable for all purposes, State and local; therefore

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

"# 1. That the shares of stock in each national bank of this State shall be subject to taxation for all State purposes, and shall be subject to taxation for the purposes of each county, city, town, and taxing district in which the bank is located.

"# 2. For the purposes of the taxation provided for by the next preceding section, it shall be the duty of the president and the cashier of the bank to list the said shares of stock with the assessing officers authorized to assess real estate for taxation, and the bank shall be, and remain liable to the State, county, city, town, and district for the taxes upon said shares of stock.

"# 3. When any of said shares of stock have not been listed for taxation for any of said purposes under levy or levies of any year or years since the adoption of the revenue law of eighteen hundred and ninety-two, it shall be the duty of the president and cashier to list the same for taxation under said levy or levies: *Provided,* That where any national bank has heretofore, for any year or years paid taxes upon its franchise as provided in article three (3) of the revenue law of eighteen hundred and ninety-two, said bank shall be excepted from the operation of this section as to said year or years: *And provided further,* That where any national bank has heretofore for any year, or years, paid State taxes under the Hewitt bill in excess of the State taxes required by this act for the same year or years, said bank shall be entitled to credit by said excess upon its State taxes required by this act.

"# 4. All assessments of shares of stock contemplated by this act shall be entered upon the assessor's books, certified and reported by the officers as assessments of real estate are entered, certified, and reported, and the same shall be certified to the proper collecting officer for collection as assessments of real estate are certified for collection of taxes thereon.

"#5. The assessments of said shares of stock and collection of taxes thereon, as contemplated by this act, may be enforced as assessments of real estate and collection of taxes thereon may be enforced.

"#6. The purpose of this act is to place national banks of this State with respect to taxation upon the same footing as State banks as nearly as may be consistently with said article three (3) of the revenue law and said decision of the Supreme Court.

"#7. Whereas, it is important that State banks

and national banks should be taxed equally for all purposes, an emergency exists, and this act shall take effect and be in force from and after its passage.

"Approved March 21, 1900."

Rec., pp. 8, 9, & 43, 44.

The officer's return shows that the summons was served upon the bank, M. J. Farris, president, and J. A. Quisenberry, cashier (Rec., pp. 3 and 38).

The bank, its president and cashier filed both their special and general demurrers to the statement, which were overruled (Rec., pp. 3, 4, and 39).

The bank, its president and cashier then filed their answer, alleging that said bank had at all times kept a correct list of the names and residences of all the shareholders in said bank and the number of shares held by each, in the office where its business is transacted, subject to the inspection of the officers authorized to assess taxes during business hours of each day; that no such officer had ever exercised this right, save and except the assessor of Boyle County, Kentucky, who inspected said list during 1899 and 1900 (Rec., pp. 5 and 40); pleading the Hewitt act, its due acceptance by the bank, the opinion of the Kentucky Court of Appeals, filed June 1, 1895, in The Commonwealth, for the Use, &c., *vs.* Farmers Bank, &c., 97 Ky., 590, upholding said act, and requiring banks to pay taxes thereunder, the due payment by said bank of all its taxes thereunder to the State for the years 1892, 1893, 1894, 1895, and 1896, and the acceptance of said taxes by the State, which it still retains; the reversal of said opinion by the decision in Deposit Bank of Owensboro *vs.* Davis Co., 39 S. W., 1030; 19 Ky. L. R., 248, filed March 24, 1897 (Rec., pp. 6 and 42), pleading these payments in bar of this action for the aforesaid years; pleading and alleging since January 1, 1892, no valid law existed in Kentucky directing that shares in national banks should be taxed at all (Rec., pp. 7 and 43), setting out in full the act of March 21, 1900 (Rec., pp. 8, 43, and 44),

and alleging that the whole of said act is in contravention of the Constitution and laws of the United States, especially sections 5210 and 5219, U. S. Revised Statutes, and therefore void.

The act of March 21, 1900, and the provisions of the Hewitt act are admitted to be correctly stated in the answer. The due acceptance of the Hewitt act by the bank and the payment of taxes thereunder are proven by J. A. Quisenberry, cashier of the Citizens National Bank, witness for the Commonwealth, no other witness being called (Rec., pp. 21 and 57).

The filing of the reply and rejoinder completed the issue before the county court, and the matter was tried before that court, which entered its judgment that the shares of stock in said bank are liable for taxation for county purposes, and have never been assessed or listed for taxation for county purposes for the years 1894, 1895, 1896, 1897, 1898 and 1899, and ordering the same to be assessed in the name of the bank, and in addition to the taxes that said bank pay a sum equal to 20 per cent. thereof, as a penalty (Rec., pp. 14, 15), from which judgment the bank, its president, and cashier prosecuted an appeal to the Circuit Court of Boyle County, Ky., which court dismissed the proceeding (Rec., p. 28), from which judgment of dismissal the Commonwealth of Kentucky, for the use, &c., prosecuted an appeal to the Kentucky Court of Appeals, which reversed the Boyle Circuit Court (Rec., pp. 30, 31, 32, 33, 34, 35), whereupon the action was remanded to said Circuit Court, and the mandate of said Court of Appeals was filed in the Boyle Circuit Court, and said case was reinstated on its docket (Rec., p. 65); and thereafter an amended answer and response was filed by The Citizens National Bank, &c. (Rec., pp. 66, 67, 68, 69), to whch a reply was filed (Rec., p. 70), general demurrer to reply (Rec., p. 71), rejoinder (Rec., pp. 71, 72), and an amended rejoinder offered and not allowed filed, but ordered copied into the record for the

purposes of an appeal (Rec., pp. 73, 74, 75, 76 and 77), and a judgment was entered in said court, assessing *in the name of the bank* 1,473 shares of stock for the years 1896, 1897, and 1898, and 990 shares for the year 1899, and directing the sheriff to collect $408.46 for the year 1896; $442.90 for the year 1897; $541.97 for the year 1898, and $537.47 for the year 1899, and that said bank pay to said sheriff 20 per cent. upon each of said sums, as a penalty (Rec., pp. 73, 74, 75 and 76), from which judgment The Citizens National Bank, &c., prosecuted an appeal to the Court of Appeals of Kentucky, which court affirmed said judgment of said Boyle Circuit Court (Rec., p. 81), and at the request of The Citizens National Bank, &c., the entire record is certified to this Court for its review and adjudication.

The capital stock of the Citizens National Bank for the year 1899 was $100,000.00, evidenced by 1,000 shares, of $100.00 each, and for the years 1898, 1897, and 1896 the capital stock was $150,000.00, evidenced by 1,500 shares of $100.00 each. See testimony of Mr. John Quisenberry (Rec., pp. 16 and 52).

The judgment entered herein by the Boyle Circuit Court, and affirmed by the Kentucky Court of Appeals, assesses 1,473 shares of stock, and levies a tax upon each of said shares for the years 1898, 1897, and 1896, *in the name of the bank,* and assesses 990 shares of stock for the year 1899, and levies a tax upon each of said shares, *in the name of the bank,* and in addition thereto awards a penalty of 20 per cent. upon each of said amounts against the *bank* (Rec., pp. 73, 74, 75, and 76). This judgment, therefore, makes the *bank* liable for an assessment upon 473 shares of stock for each of the years 1898, 1897, and 1896, and a penalty of 20 per cent. thereon, which were not in existence on March 15, 1901, the day on which this proceeding was begun, and which have never been in existence since the year 1898.

Assignment of Errors.

The assignment of errors by the Citizens National Bank, M. J. Farris, president, and J. A. Quisenberry, cashier, is as follows:

1. The act of March 21, 1900, violates and is repugnant to that part of section 10 of article 1 of the United States Constitution, which is, "No State shall pass any law impairing the obligation of contracts."

2. The act of March 21, 1900, is repugnant to section 1 of the Fourteenth Amendment of the United States Constitution, which is, "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

3. The act of March 21, 1900, is repugnant to section 5210 of the United States Revised Statutes, in that it requires the president and cashier of national banks to list shares of stock therein with the assessing officers.

4. The act of March 21, 1900, is repugnant to section 5219 of the United States Revised Statutes, in that it provides "that the shares of stock in each national bank in Kentucky shall be subject to taxation for the purposes of each county, city, town, and taxing district."

5. The act of March 21, 1900, is repugnant to section 5219 of the United States Revised Statutes, in that it requires "all assessments of shares of stock to be reported as assessments of real estate, and certified for collection as assessments of real estate are certified for collection.

6. The act of March 21, 1900, is repugnant to section 5219 of the United States Revised Statutes, in that it requires the assessment of said shares of stock to be made as assessments of real estate are made.

7. Section 3 of the act of March 21, 1900, is peculiarly repugnant to section 5219 of the United States Revised Statutes, because the legislature had enacted no law anterior

thereto, declaring shares in national banks taxable, and because its enforcement imposes a tax upon the franchise, capital, and assets of the bank, which the bank must pay, as the ownership of said shares has changed many times over from 1900 back to 1892.

8. The act of March 21, 1900, is repugnant to section 5219 of the United States Revised Statutes, because it makes the tax upon shares in national banks the debt of the *bank* and not the debt of the *owners* of said shares.

9. The act of March 21, 1900, is repugnant to section 5219 of the United States Revised Statutes, in that it provides for assessing shares of stock in national banks and collecting taxes thereon for a period of time anterior to the date of its passage and approval.

10. The decision and final judgment of the Court of Appeals of Kentucky herein is repugnant to section 5219 of the United States Revised Statutes, in that it holds that said section 5219 is self-operative in Kentucky, without the aid of an act of the General Assembly of the Commonwealth of Kentucky, declaring shares of stock in national banks therein taxable, and defining the manner and place of taxing the same, and restricting the taxes laid thereon to a rate not greater than is assessed upon other moneyed capital in the hands of individual citizens of the State, and providing that shares of non-residents shall be taxed in the city or town where the bank is located and not elsewhere.

11. The decision and final judgment of the Court of Appeals of Kentucky is repugnant to the decision of the United States Supreme Court in the case of Owensboro National Bank *vs.* Owensboro, 173 U. S., 664, in that said decision and final judgment of said Court of Appeals decides and adjudges that the "act of March 21, 1900, did not therefore make that taxable which was not taxable before, but simply provided another mode for assessment of the shares of stock and the payment of taxes thereon."

12. Section 4241 of the Kentucky Statutes, upon which this proceeding is based, and prosecuted through the courts

of Kentucky, and which the Court of Appeals of Kentucky declared valid as so invoked and used, is section 3 of article 13 of chapter 103 of the Acts of the General Assembly of the Commonwealth of Kentucky, for the years 1891, 1892 and 1893, and became a law on November 11, 1892, and as herein invoked and applied is repugnant to section 1 of the 14th Amendment of the United States Constitution, sections 5210 and 5219 of the United States Revised Statutes, and to the principles laid down by the United States Supreme Court in the decision of Owensboro National Bank *vs.* Owensboro, 173 U. S., 664.

13. This proceeding is neither against the shareholder nor the shares of stock, but is a direct attack upon the capital and assets of the bank, contrary to section 5219, United States Revised Statutes.

14. It is not a new remedy invoked, but the old one provided by section 4241 of the Kentucky Statutes, aforesaid.

15. The decision and final judgment of the Court of Appeals of Kentucky is erroneous in that it fails to reverse the judgment of the Boyle Circuit Court and order this proceeding dismissed.

16. The act of March 21, 1900, permits an illegal discrimination against stock in national banks as compared with other moneyed capital in the hands of individual citizens, contrary to the provisions of section 5219, United States Revised Statutes.

17. The decision herein of the Court of Appeals of Kentucky authorizing the deduction of United States bonds owned by national banks from assessment of the property of national banks is in contravention of section 5219, United States Revised Statutes.

18. The decisions and final judgments of the Court of Appeals of Kentucky are repugnant to section 5219 of the United States Revised Statutes, because no law existed on the statute book of Kentucky from 1892 to March 21, 1900, declaring shares of stock in national banks taxable, and said

decisions declare that said shares of stock were taxable under *"general law,"* and not according to the terms of said section.

19. Section 3 of the act of March 21, 1900, is peculiarly repugnant to section 5219 of the United States Revised Statutes, in that it is retroactive by authorizing assessment of shares of stock in national banks and the collection of taxes thereon for an *indefinite period* anterior to its passage, and that it provides that "where any national bank has for any year or years paid taxes upon its *franchise*, said bank shall be excepted from the operation of this section, as to said year or years, and further that where any national bank has for any year or years paid State taxes under the Hewitt bill in excess of the State taxes required by this act for the same year or years, said *bank* shall be entitled to credit by said excess upon its State taxes required by this act."

ARGUMENT.

The points for argument are:

1. That this proceeding and the judgment and opinion therein of the Court of Appeals of the Commonwealth of Kentucky and the whole of the act enacted by the General Assembly of the Commonwealth of Kentucky and approved March 21, 1900, are repugnant to the 14th Amendment to the Constitution of the United States and to sections 5210 and 5219 of the Revised Statutes of the United States.

2. That the Court of Appeals of the Commonwealth of Kentucky having adjudged and decreed article 2 of chapter 92 of the General Statutes of Kentucky (commonly called the Hewitt act) to be in full force, and the bank must be taxed under its provisions, all national banks which accepted its provisions and paid taxes thereunder to the State for the years 1892, 1893, 1894, 1895, and 1896, and which the State accepted and still retains, are thereby protected from an assess-

ment by the State for the use and benefit of a *county* for taxes for the aforesaid years, and especially protected against the infliction of a penalty for not having paid taxes to a *county*, notwithstanding said judgment and decree had subsequently been overruled.

The law of Kentucky governing the taxation of national banks was reviewed by this court in the case of Owensboro National Bank *vs.* Owensboro, decided April 3, 1899, wherein it was stated:

> "Thus bringing the two conclusions together, there would seem to be no escape in reason from the proposition that the taxing law of the State of Kentucky is beyond the authority conferred by the act of Congress, and is therefore *void* for repugnancy to such act."
>
> Owensboro National Bank *vs.* Owensboro, 173 U. S., 676.

Owing to the foregoing decision, the General Assembly of the Commonwealth of Kentucky passed the act known as the act of March 21, 1900, and under which this proceeding is prosecuted by the aid of section 4241 of the Kentucky Statutes, relating to property omitted from taxation.

This proceeding is for the purpose of enforcing section 3 of the act of March 21, 1900, which is:

> "When any of said shares of stock have not been listed for taxation for any of said purposes under levy or levies of any year or years since the adoption of the revenue law of eighteen hundred and ninety-two, it shall be the duty of the president and cashier to list the same for taxation under said levy or levies; *Provided* That where any national bank has heretofore for any year or years paid taxes upon its franchise as provided in article 3 of the revenue law of eighteen hundred and ninety-two said *bank* shall be excepted from the operation of this section as to said year or years; *And provided further* That where any national bank has heretofore for any year or years paid State taxes under the Hewitt bill in excess of

the State taxes required by this act for the same year or years, said *bank* shall be entitled to credit by said excess upon its State taxes required by this act" (Rec., pp. 8 and 43, 44).

While this proceeding purports to tax the shares of stock, yet the judgment entered herein is against the bank, to which is added a penalty of 20 per cent, which is also inflicted upon the bank.

The very language of the above section shows that its provisions relate to the *bank*, and not to shares of stock therein, because by its terms the *bank* is excepted from the operation of said section in case it has paid taxes upon its franchise for any of the years involved, and further, the *bank* is *"entitled to credit upon its State taxes required by this act"* for any excess of the State taxes required by said act which it may have paid under the Hewitt bill.

The act of March 21, 1900, embraces no penalty. The penalty of 20 per cent included in the judgment herein against the bank is provided by section 4241 of the Kentucky Statutes, and embraced in the general revenue law of the State.

The act of March 21, 1900, makes the bank liable for the payment of the taxes assessed against the stock therein, but it does not require the *bank* to list the stock. It directs the president and cashier to list the stock, and no penalty can be inflicted against the bank for any omission to list stock therein. By inflicting this penalty upon the *bank* it is adjudged to be in default, and this proceeding is thereby adjudged to be against the *bank*, and not against its *shareholders* and their *shares* of stock. The act of March 21, 1900, fails to give the *bank* a lien either upon the dividends declared upon its stock or upon its stock or upon any other property belonging to the owners of its shares of stock to secure to the bank the repayment to it of any taxes paid by it on behalf of its shareholders upon their shares of stock.

The shareholders during the years 1892, 1893, 1894, 1895,

1896, 1897, 1898, and 1899 are not the same as those of March 15, 1901, the date on which this proceeding was instituted.

This proceeding cannot be founded upon the violent assumption that the list of shareholders remained the same from 1892 to 1901; and if such an assumption is not tenable, how then can it be claimed that this is an action to collect a tax upon the shares of stock in said bank, and not to collect a tax upon the assets of the bank?

The Court of Appeals of Kentucky holds and adjudges that section 3 aforesaid, of the act of March 21, 1900, makes the president and cashier the agents of the shareholder to list said shares of stock for taxation from 1892 to 1899, and because said shares have not been listed according to the provisions of this section a penalty of 20 per cent is inflicted upon the bank. The section imposes the duty of listing the shares upon the president and cashier and not upon the bank. It provides that the bank shall pay the tax only.

The capital of this bank in 1899 was $100,000, divided into 1,000 shares, and from 1898 to 1892, inclusive, it was $150,000, divided into 1,500 shares (Rec., pp. 16 and 52).

Suppose during 1892 these 1,500 shares were owned by "A;" during 1893 by "B;" during 1894 by "C;" during 1895 by "D;" during 1896 by "E;" during 1897 by "F;" during 1898 by "G;" and during 1899 the 1,000 shares were owned by "H;" and at the time this proceeding was begun, on March 15, 1901, by "K;" how under these conditions could the president and cashier perform the duties laid upon them by the aforesaid section 3?

Five hundred of the shares which were in existence from 1892 to 1898 were cancelled, and in 1899 only 1,000 shares of the original 1,500 remained. Under these circumstances where would the president and cashier on March 15, 1901, obtain 1,500 shares to list for the years 1892 to 1898, inclusive, and whose shares would they list? If "K" owned the 1,000 remaining shares on March 15, 1901, would they

list these for the taxes claimed should have been paid on the 1,500 shares owned by "A" in 1892?

The mere statement of the facts coupled with the foregoing supposition, by way of illustration, exposes glaringly the error of the judgment of the Court of Appeals of Kentucky in this proceeding and the illegality of section 3 of the foregoing act.

When this proceeding was instituted on March 15, 1901, there were only 1,000 shares of stock of this bank in existence, yet a judgment was entered herein against said *bank* during April, 1905, wherein it is

> "adjudged that for each of the years 1896, 1897 and 1898 1,473 shares, and for the year 1899, 990 shares are liable for taxation for county purposes and have never been assessed or listed for taxation, and that said shares of stock be listed and assessed * * * in the *name of the bank,* * * * and the sheriff will collect $408.46 for the year 1896, $442.90 for the year 1897, $541.97 for the year 1898, and $537.47 for the year 1899, and it is further adjudged that said *Citizens National Bank,* and its president, M. J. Farris, and its cashier, J. A. Quisenberry pay to said sheriff 20 per cent upon each of said sums due said county for each of said years, as above stated, as a penalty for their failure to list said shares of stock, and the costs of these proceedings in this court, and in the Boyle County Court."
>
> (Rec., pp. 75 and 76.)

Which aforesaid judgment was affirmed by the Court of Appeals of Kentucky (Rec., p. 81).

Section 5219, United States Revised Statutes, confers upon the State the right to tax shares of stock in national banks upon condition that it tax these shares as therein provided. Hence it follows, that shares of stock in national banks are non-taxable in that State which either refuses, declines, fails, or omits to enact a statute declaring said shares subject to taxation and prescribing the manner and place of taxing them in harmony with the provisions of said section. This

section itself imposes no tax, but simply grants the right to a State to tax, and any legislation of the State based thereon operates from its date into the future, and not in the past.

Covington *vs.* First National Bank, 198 U. S., 112-113.

The interpretation placed upon said section 3, of the act of March 21, 1900, by the Court of Appeals of Kentucky not only brings the operation of said section into flagrant violation of the terms of section 5219, United States Revised Statutes, but said interpretation and application departs from "the sound rule of construction that a statute shall have a prospective operation only, unless its terms show clearly a legislative intention that it operate retrospectively."

"The words of a statute ought not to have retrospective operation unless they are so clear, strong and impressive that no other meaning can be annexed to them, or unless the intention of the Legislature can not be otherwise satisfied."

Watts vs. Commonwealth, 78 Ky., 331.

Lawrence *vs.* City of Louisville, 96 Ky., 598.

Ohio Valley Telephone Co. *vs.* City of Louisville, 94 S. W., 17.

United States *vs.* American Sugar Company, 202 U. S., 577.

United States *vs.* Barr, 159 U. S., 778.

But a tax upon shares of stock in national banks is the individual debt of the owner of the shares. If the judgment in this proceeding is sustained, then the bank must pay it out of the assets of the bank, thereby using the property in which the shareholder of 1909 or 1910 has an interest, to pay the debt of another party, together with a 20 per cent. penalty, which would not only violate the Constitution and laws of the United States, but all known principles of law.

The enforcement of the judgment based upon this proceeding must be from the assets of the bank, as no provision is made by the act of March 21, 1900, to satisfy it from the property of any shareholder, which demonstrates that the proceeding is not *"another mode for the assessment of the shares of stock and the payment of taxes,"* as stated by the Court of Appeals of Kentucky (Rec., p. 35), but is a tax upon the property of the *bank*, and not a tax upon its *shares*.

The United States Supreme Court having declared, in Owensboro National Bank *vs.* Owensboro, 173 U. S., 676, that the taxing law of Kentucky is *void*, the Court of Appeals of Kentucky, by its opinion herein declares that shares of stock in national banks were taxable under "general law," and that the act of March 21, 1900, "created no new right, but simply gave a new remedy," and upholds this proceeding, based upon section 4241 of the Kentucky Statutes, whereby the act of March 21, 1900, is attempted to be enforced.

The Court of Appeals of Kentucky, in its opinion herein, states:

> "It was held under the previous statute that the shares of stock in national banks might be assessed to the shareholder by the assessor and should be given in by the shareholder in the list of his personal property (Scobee *vs.* Bean, 109 Ky., 526). The act of March 21, 1900, did not therefore make that taxable which was not taxable before, but simply provided another mode for the assessment of the shares of stock and the payment of the taxes. It was the duty of the assessor to make the assessment. It was also the duty of the president and cashier of the bank to list the shares of stock with the assessor; but when the assessment was not made the property was simply omitted from the tax list and the sheriff is authorized by section 4241 Kentucky Statutes, to institute the proceeding to have any omitted property assessed. A penalty may be properly imposed in the proceeding because the property was not listed with the assessor as required by law, and stood as other prop-

erty for the assessment of which a proceeding under section 4241 may be instituted.

"While neither the bank, nor its president nor its cashier is the owner of the shares of stock, the bank is made by the act the agent of the shareholders, and the notice to it is notice to his agent within the meaning of section 4241. The president and cashier were properly made defendants because it is made their duty by the statute to list the stock. The bank is required to keep a list of its shareholders, and therefore knows who they are.

"Notice to the agent in an assessment of property is sufficient notice to his principal, whom he represents. Certainly the agent cannot raise the question of the want of notice to his principal, or maintain that the proceeding is in violation of the fourteenth amendment to the Constitution of the United States. Nor can it raise the question that peradventure some of the shares may have changed hands. These defenses can only be made by the shareholders and do not properly arise in this case." (Rec., pp. 34 and 35).

Covington *vs.* First National Bank, 198 U. S., 100.

As one of the defenses against this proceeding the Citizens National Bank, its president and cashier, in paragraph 4 of their answer, charge and aver that the whole of the act of March 21, 1900, is in contravention of the Constitution and laws of the United States, and therefore *void* (Rec., pp. 8, 43 and 44).

Prior to filing their aforesaid answer, the bank, its president and cashier, filed their special demurrer to the jurisdiction of the court and the capacity of the plaintiff to bring and maintain this action, and thereafter, their general demurrer, both of which were overruled (Rec., pp. 3, 4, 63, 64).

In the case of Owen County Court *vs.* Farmers National Bank of Owenton, Kentucky, instituted by the sheriff on

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October 16, 1897, and decided November 20, 1900, the Court of Appeals of Kentucky uses this language:

> "Subsequently the Supreme Court of the United States decided that article 3, chapter 103 of the Acts of 1891 and 1893 was void and of no effect in so far as the same provides for the taxation of the franchise of national banks. In consequence of which decision there was at the date of the institution of this proceeding in the county court and of judgment of the circuit court *no mode* of *taxation* of national banks. To meet this decision the legislature passed an act which was approved on the 21st day of March, 1900, but as this law was not in operation at the date of the judgment complained of, it follows that the circuit judge did not err in his judgment dismissing the motion of appellants."
>
> Owen County Court *vs.* Farmers National Bank, 59 Southwestern Reporter, 7.

In Scobee *vs.* Bean *et al.*, decided December 14, 1900, by the Court of Appeals of Kentucky, it is said:

> "In September, 1899, the appellees, Bean and others, were owners of certain shares of stock in the Clark County National Bank. The assessor of that county, in virtue of the general revenue laws of the State, assessed these shares for taxation at their fair cash value in the hands of the various owners. When the sheriff in due course, was about to collect the tax, this suit was brought to prevent him, on the ground that shares of stock in national banking associations in Kentucky are not assessable or taxable, because the legislature has not determined and directed the manner and place of taxing such shares. The chancellor upheld the plaintiff's contention, and the sheriff has appealed. * * *
>
> "We think the various statutes are sufficiently broad to constitute a legislative determination and direction of the manner and place of taxing every species of personal estate to be found in the State, and under them such estate is to be taxed, unless by more specific reasons it is to be taxed otherwise; and as the statutes which were intended to apply to the

taxation of banking associations and bank stocks, included national banks, it follows that there is no specific provision for the taxation of the species of personal property in question and its taxation must be held to be *regulated* by *general law.* * * *

"Whereupon the judgment is reversed, and the cause is remanded for proceedings consistent herewith."

Scobee *vs.* Bean *et al.*, 109 Ky., 526; 59 Southwestern Reporter, 860.

What is that *general law,* referred to in Scobee *vs.* Bean *et al.,* by which shares in national banks are to be taxed?

In the case of The City of Lexington *vs.* Fishback's Trustee the Court of Appeals of Kentucky states that "the rule in Kentucky is that the situs of personal property is the domicile of its owner, and is there taxable."

The City of Lexington *vs.* Fishback's Trustee, 109 Ky., 770; 60 S. W., 727.

In the case of City of Frankfort *vs.* Fidelity Trust Company the same court states:

"The rule in this State is to tax mortgaged real estate to the mortgagor, and the mortgage itself when owned and controlled by a non-resident of the State, as personal property, to be taxed like other choses in action, at the domicile of the creditor."

Board of Councilmen of City of Frankfort *vs.* Fidelity Trust Company, 111 Ky., 667; 64 S. W., 470.

Therefore to tax national bank shares according to "*general law,*" as defined by the Court of Appeals of Kentucky in the foregoing cases, would result in taxing only those shares which were owned by the residents and citizens of Kentucky, and omitting all shares of stock of the Citizens National Bank which were owned by non-residents of the State. If the 1,000 shares of stock of the Citizens National Bank were owned and controlled by residents of New York, then, ac-

cording to the law of taxation laid down by the Court of Appeals of Kentucky, no tax could be assessed against said shares in Kentucky, but they would have to be taxed, like other choses in action, at the domicile of their owner, to wit, New York. But section 5219, United States Revised Statutes, provides—

> "that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere."

It is clear that the method of taxing shares of stock in national banks laid down in Scobee *vs.* Bean is repugnant to section 5219, United States Revised Statutes, and it must therefore follow that no valid law existed in Kentucky on March 15, 1901, providing for the taxation of these shares, provided, as stated in the opinion in this proceeding—

> "the act of March 21, 1900, did not therefore make that taxable which was not taxable before, but simply provided another mode for the assessment of the shares of stock and the payment of the taxes, and created no new right, but simply gave a new remedy."
> Commonwealth *vs.* Citizens National Bank, 117 Ky., 946; 80 S. W. Rep., 158 (Rec., p. 35),

and the demurrers herein should have been sustained and this proceeding dismissed.

Section 5201, United States Revised Statutes, prohibits banks from either owning or holding its shares.

The enforcement of section 3 of the act of March 21, 1900, of the Kentucky legislature would deprive the owners of shares of stock in national banks of their property therein without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

This proceeding neither discloses the name nor residence of any owners or holders of shares of stock in the Citizens National Bank, nor the agent or attorney of such owner, nor

the name of the person in possession of said shares. The owner of said shares is excluded from all participation in the valuation, assessment and taxation of said shares, and the whole matter is relegated into the hands of those who neither own nor possess said shares. No notice is given to the owner and no forum is provided before which he can be heard in defense of his property upon the ground that the valuation placed thereon is either unreasonable, or confiscatory. The act denies him any voice in the matter.

The summons is served neither upon the owners nor their agents, or attorneys, but upon the bank, and a judgment is entered herein against the bank ordering that said shares be assessed for the years 1896, 1897, 1898, and 1899, in the *name* of the *bank,* and the sheriff is directed to collect the sum total of $1,930.80, together with 20 per cent thereof as a penalty (Rec., pp. 75 and 76).

The listing and assessing of shares of stock in national banks do not devolve upon the bank, nor upon its president and cashier, but rest wholly between the owner of said shares and the assessing officer. The president and cashier have performed their whole duty as to the listing and assessing of said shares by keeping the list of shareholders as provided in section 5210, United States Revised Statutes.

Section 5219, United States Revised Statutes, provides that "nothing herein shall prevent all the shares of an association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located," etc. This section permits the State to authorize, empower, and direct its assessing officers when taking from each citizen an inventory of his personal property and assessing it to include therein the number and value of the shares of stock owned and held by him in national banks; but the act of March 21, 1900, forbids this and provides that the president and cashier of the bank shall attend to this matter without any conference whatever with

the owner of the shares, thereby leaving him wholly in ignorance of the value placed upon his shares of stock in a national bank.

Holden *vs.* Hardy, 169 U. S., 366.
Palmer *vs.* McMahon, 133 U. S., 669.

This proceeding is for the purpose of collecting a tax upon national bank shares for the benefit of a *county*.

Section 5219, United States Revised Statutes, explicitly declares:

> "Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

But its terms are just as explicit in prescribing that

> "nothing herein shall prevent all the shares of an association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes *imposed* by the *authority* of the *State*, within which the association is located."

By section 181 of the Constitution of Kentucky, it is provided that—

> "The General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may by general laws confer on the proper authorities thereof respectively the power to assess and collect such taxes" (Rec., p. 34).

We respectfully submit that section 5219 is plain, and that the right therein given a State to tax shares of stock in national banks can not be delegated to counties, cities, towns, and taxing districts, except in the case of shares owned by non-residents of the State, which must be taxed by the city or town wherein the bank is located, and that the proper construction and interpretation of this section produces the following results.

1. That the shares of stock in national banks owned by the citizens of the State in which said bank is located shall be taxed by the State alone, and are not taxable by either the county, city, town, or any taxing district.

2. That the shares owned by non-residents of the State in which the bank is located shall be taxed by the city or town where the bank is located, and not elsewhere.

3. That the real estate owned by the bank is liable for State, county, city, and municipal taxes.

As this proceeding is instituted against the Citizens National Bank, M. J. Farris, president, and J. A. Quisenberry, cashier, for the purpose of enforcing the act of March 21, 1900, by compelling them to comply with its terms and provisions, it therefore becomes their duty to raise and urge every ground upon which said act is conceived to be repugnant to the Constitution and laws of the United States. The aforesaid defenses are not confined solely to shareholders.

Hills *vs.* Exchange Bank, 105 U. S., 319.
Boyer *vs.* Boyer, 113 U. S., 689.
Cummings *vs.* National Bank, 101 U. S., 153.
Pelton *vs.* Commercial National Bank, 101 U. S., 143.

In concluding that the provisions of section 5219 do not warrant a tax for *county* purposes being laid upon national bank shares, we have examined section 41 of the act of June 3, 1864, of which 5219 is an amendment. Section 41 of the act of June 3, 1864, is as follows:

> "Provided that nothing in this act shall be construed to prevent all shares in any of said associations held by any person, or body corporate from being included in the valuation of the personal property of such person, or corporation in the assessment of taxes *imposed by* or *under* State authority at the

place where such bank is located and not elsewhere, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State. Provided further, That the tax so imposed *under* the laws of any State upon the shares of any associations authorized by this act shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the State where such association is located. Provided also, That nothing in this act shall exempt the real estate of associations from either State, county, or municipal taxes to the same extent, according to its value as other real estate is taxed" (U. S. Statutes at Large, vol. 13, p. 111).

This act of June 3, 1864, permitted these shares to be included in the valuation of personal property in the assessment of taxes *imposed* by or *under* State authority, thereby seeming to give to the State the right to delegate this taxing power, but in section 5219 no such ambiguous language occurs, but on the contrary it is specific and direct, and limits the taxing power to the taxes *"imposed by authority of the State."* The use of the words "taxes imposed by or *under* State authority" in section 41, act of June 3, 1864, seems clearly to grant to the State the right to delegate to the county, city, town, and taxing district the power to levy a tax on these shares in national banks, and we infer that by the omission of this phrase and the substitution therefor of the terms *"taxes imposed by authority of the State,"* that Congress meant something, by the alteration of the language, and what it did mean was that this right to tax shares of stock in national banks which are owned by persons who are residents of and domiciled in said State where the bank is located should be limited to a State tax alone, and in so altering the language made the meaning clear and unambiguous.

The act of March 21, 1900, permits an illegal discrimination against shares of stock in national banks and in favor

of moneyed capital in the hands of individual citizens of the State by requiring these shares to be assessed as real estate, while no tax whatever is placed upon shares of stock in State banks, these institutions being taxed under sections 4077 and 4020, Kentucky Statutes, which are:

> "Every incorporated bank shall in addition to the other taxes imposed upon it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district where its franchise may be exercised" (section 4077, Kentucky Statutes).

Section 4020, Kentucky Statutes, is:

> "All real and personal estate within this State, and all personal estate of persons residing in this State, and all corporations organized under the laws of this State, whether the property be in or out of this State, including intangible property, which shall be considered and estimated in taxing the value of corporate franchises as hereinafter provided, shall be subject to taxation unless the same be exempt from taxation by the Constitution and shall be assessed at its fair cash value, estimated at the price it would bring at a fair voluntary sale" (section 4020, Kentucky Statutes).

And the shares of stock in said corporations are exempt from taxation by section 4085, Kentucky Statutes, which is:

> "The property of all corporations, except where herein differently provided, shall be assessed in the name of the corporation in the same manner as that of a natural person, except that, when legally called on, the chief officer shall report a full statement of the property of such corporation for taxation, and, for a failure shall be subject to the penalties in this article provided; and so long as said corporation pays the taxes on all of its property of every kind, the individual stockholders shall not be required to list their shares in said corporation" (section 4085, Kentucky Statutes).

In the case of Citizens National Bank of Lebanon and Marion National Bank *vs.* Burton, the Court of Appeals of Kentucky says, in construing the foregoing sections:

> "So that a tax against a State bank, which is entitled to have deducted from the assessment of its capital, so much of its capital as was invested in the bonds of the United States, discriminates in law against a national bank shareholder, who is assessed upon the value of his share in the national bank's capital, from which no such deduction is allowed."
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> Citizens National Bank of Lebanon *vs.* Burton, 121 Ky., 876; 90 S. W. Rep., 945.

In the case of Home Savings Bank *vs.* Des Moines, 205 U. S., 510, it is stated:

> "We must inquire whether the law really imposes a tax upon the shares of stock as the property of their owners, or merely adopts the value of those shares as the measure of valuation of the property of the corporation, and by that standard taxes that property itself."
>
> Home Savings Bank *vs.* Des Moines, 205 U. S., 510.

The act of March 21, 1900, declares shares of stock in national banks subject to taxation, and makes it the duty of the president and cashier to list said shares, and declares that the bank shall be and remain liable for the taxes upon said shares, without any provision being made whereby the bank may recover the amount of the taxes so paid on behalf of its shareholders.

By section 3 of said act it is provided that when any of said shares have not been listed for taxation since 1892 it shall be the duty of the president and cashier to list the same; national banks which have paid a franchise tax to be excepted from the operation of this section, and those which have paid State taxes under the Hewitt bill in excess of the State tax required by said act to be credited by said excess upon the State tax.

By section 4 of said act all assessments of shares of stock shall be entered upon the assessors' books as the assessments of real estate are entered, *"and not included in the valuation of the personal property of the owners or holders of such shares in assessing taxes imposed by authority of the State,"* as is required by section 5219 of the United States Revised Statutes.

An analysis of the act of March 21, 1900, shows that it simply contemplates the taxation of the property of the bank, and not its shares, and the opinion of the Court of Appeals of Kentucky herein shows that that court construed that act to levy a tax upon the property of the bank, and not upon its shares of stock.

The Court of Appeals of Kentucky in its opinion rendered herein states:

> "Section 6 of the act of March, 1900, provides that the purpose of the act is to place national banks, with respect to taxation, upon the same footing as state banks, and one reason given for the emergency clause is that it is important that State banks and *national banks* should be taxed equally for all purposes. Under these provisions any exemption from taxation which would be allowed a State bank, or any deduction that would be made in favor of a State bank, must, under the act of 1900, be made in the assessment of the shares of stock of a national bank" (Rec., p. 34).
>
> Commonwealth *vs.* Citizens National Bank, 117 Ky., 946; 80 S. W. Rep., 158.

In Van Allen *vs.* The Assessors it is said:

> "The banks of the State are taxed upon their capital; and although the act provides that the tax on the shares of the national banks shall not exceed the par value, yet, inasmuch as the capital of the State banks may consist of the bonds of the United States, which are exempt from State taxation, it is easy to see that this tax on the capital is not an equivalent for a tax on the shares of the stockholders."
>
> Van Allen *vs.* The Assessors, 3 Wall., 581.

In a dissenting opinion delivered by Judge Barker, of the Court of Appeals of Kentucky, in the case of Hager, auditor, *vs.* Citizens National Bank, he states:

> "In my opinion the legislature of Kentucky has never thoroughly gotten into its mind any scheme of taxation except a property tax. It has, upon different occasions, called a tax by a different name, but an analysis of the whole statute bearing upon the question, it seems to me, shows that whatever the legislature may have said as to the nature of the tax it has always rested upon the assets. In my judgment, neither the act of 1900, 1902 or 1904 in reality provides for a tax upon the shares of the shareholder.
>
> "It is true we treated it as such, because the counsel for the banks treated it as such, and no one really presented for our consideration the question as to whether the tax was more than it nominally professed to be, namely a tax upon the shares * * *
>
> "I have carefully examined that case (Des Moines Savings Bank *v.* Des Moines, 205 U. S., 503) and compared the Iowa statute with the Kentucky statute of 1906, as well as our previous statutes, and in my opinion there is no substantial difference between our statutes and the statute of Iowa."
>
> Hager, &c., *vs.* Citizens National Bank, 105 S. W. Rep., 403.

Judge Barker concurred in the opinion herein found on page 31 of the record and wrote the opinion herein found on page 81 of this record.

An amended rejoinder (Rec., p. 77) was tendered and offered to be filed in the Boyle Circuit Court, wherein the amount of the bank's capital, surplus, and undivided profits on September 15 of each of the years 1896, 1897, 1898, and 1899 was stated, and what proportion of the sum total of these three items was invested in United States Government bonds on said dates, and that United States Government bonds owned by State banks on said dates were exempt from taxation.

The opinion of the Court of Appeals of Kentucky, on the first appeal of this case (Rec., p. 31), treated the tax herein involved as a tax upon the *assets* of the bank, and construed the act of March 21, 1900, as levying a tax upon said *assets*, although it called it a tax upon the stock, and held said act valid. The aforesaid rejoinder was, therefore, tendered and offered to be filed when the case went back to the lower court. Upon the second appeal the court reaffirms its construction of said act, and uses the following language in reference to said amended rejoinder:

> "Upon the former appeal, and also in the case of The Citizens National Bank of Lebanon *vs.* Commonwealth, 25 Ky. Law Rep., 2254, we held, in applying the statute of 1900, which is involved here, that the stockholders in national banks are entitled to precisely the same exemptions as State banks, and undoubtedly if the exemption had been properly pleaded, and at its proper time, *it would have been allowed.*"
>
> National Bank *vs.* Commonwealth, 9 Wall., 353.
>
> Lionberger *vs.* Rouse, 9 Wall., 468.
>
> Aberdeen Bank *vs.* Chehalis County, 166 U. S., 440.
>
> Merchants Bank *vs.* Pennsylvania, 167 U. S., 461.
>
> New Orleans *vs.* Houston, 119 U. S., 278.
>
> Cleveland Trust Company *vs.* Lander, 184 U. S., 111.
>
> Covington *vs.* First National Bank, 198 U. S., 100.
>
> Home Savings Bank *vs.* City of Des Moines, 205 U. S., 503.

We respectfully submit that the conclusion is inevitable that the act of March 21, 1900, while nominally taxing the shares of stock of national banks, in reality imposes a tax upon the *assets* of the bank, and not upon said shares, and that the opinions of the Court of Appeals of Kentucky, herein, so construe said act, and that said act is in conflict

with sections 5210 and 5219 of the United States Revised Statutes, and therefore *void*.

II.

In further defense of this proceeding the bank, its president and cashier, plead article 2 of chapter 92 of the General Statutes of Kentucky, commonly called and known as the Hewitt act; the due acceptance thereof by the bank; the decision of the Court of Appeals of Kentucky in the case of The Commonwealth, for the use, &c., *vs.* Farmers' Bank, 97 Ky., 590, filed June 1, 1895, declaring said act was in full force, and the bank must be taxed under its provisions; that, by virtue of the aforesaid decision, article 2, chapter 92, of the General Statutes of Kentucky continued to be and was the law which governed, controlled, regulated, and provided for the taxation of all banks which accepted its provisions and paid taxes thereunder until March 24, 1897, on which date the aforesaid decision was overruled by the opinion in the case of Deposit Bank of Owensboro *vs.* Davis County, 19 Ky. L. R., 248 (Rec., p. 5 and 41); that it paid taxes to the State of Kentucky according to the provisions of the Hewitt act during 1894, 1895, and 1896, which the State then accepted and still retains, which allegation, and also the due acceptance of the Hewitt act, it proved by the Commonwealth's witness, Mr. J. A. Quisenberry (Rec., pp. 16 and 52).

Notwithstanding the fact that the Court of Appeals of Kentucky had decided that this bank must pay taxes according to the provisions of the Hewitt act, which decision remained undisturbed until March 24, 1897, when it was overruled; and notwithstanding this bank made its report to the State according to the terms of said act and paid the tax of 75 cents per share and 42½ cents upon every $100 of surplus and undivided profits to the State upon its demand so to do during the years 1894, 1895, and 1896, which amounts the

State then received and still retains, yet the Court of Appeals of Kentucky decides in this proceeding that this bank must now, in addition to the payment of taxes above mentioned, pay a tax to Boyle County, Kentucky, for 1896, 1897, 1898, and 1899, with a penalty of 20 per cent added thereto for failure to list the shares therein for taxation during those years. No demand during those years was made on this bank for county taxes, and no demand was made that its shares of stock should be listed for county taxes.

During those years the State demanded the 75 cents tax upon each share and the tax of 42½ cents upon each $100 of surplus and undivided profits, and no demand for taxes came from any other source. Was the bank to obey the law as interpreted by the Court of Appeals, or was it to follow another course? Had it resisted would not the entire machinery and power of the State been brought to bear to force it?

Yet by the decision of the Court of Appeals in this case the bank is directed to pay a county tax during these aforesaid years, of 1896, 1897, 1898, and 1899, with a penalty of 20 per cent. added thereto, which penalty is not denounced by the act of March 21, 1900, but is found in section 4241 of the Kentucky Statutes, which section has no reference whatever to national banks or the taxation thereof. They confidently assert that the payment of taxes to the State by the bank during 1894, 1895, and 1896 under the foregoing circumstances was a complete exoneration of the bank for those years and a complete defense against this proceeding for that period.

In Franklin County Court *vs.* Lou. & Nash. R. R. Co., the Court of Appeals of Kentucky declares (syllabi):

> "Where there has been a failure to list property for taxation because of the decision of the court of last resort in the State that such property was not subject to taxation, the fact that the court subsequently decides that the law was misinterpreted will not authorize the collection of taxes on the property for the

period during which the law as announced and understood did not require such property to be listed for taxation. The court of appeals of Kentucky decided in 1868 that a portion of a railroad in a county was not a part of the county property as to county taxation, but was an entirety, and liable in its consolidated character for State revenue only. This case was followed by another to the same effect, and the law remained as declared by the court of appeals until 1876. So much of appellee's road as is in Franklin county was not assessed for county taxes for the years 1868 to 1875 inclusive, and the county now seeks to collect taxes thereon for those years. Held, that while the court is of opinion that the law was misinterpreted, yet as appellee complied fully with the existing law, as interpreted by the highest judicial tribunal in the State no more could be required of it."

Franklin County Court *vs.* Lou. & Nash. R. R. Co., 84 Ky., 59.

In Louisiana *vs.* Pilsbury it is said:

"The true rule is to give a change of judicial construction in respect to a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say make it prospective, not retroactive. After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is, to all intents and purposes, the same in its effect on contracts as an amendment of the law by means of a legislative enactment."

Louisiana *vs.* Pilsbury, 105 U. S., 295.

In Franklin County Court *vs.* Lou. & Nash. R. R. Co. it is said:

"From 1868 to 1875, inclusive, it was, however, the law, as declared by this court, that the road of the appellee was not taxable for county purposes. There was no express statutory provision to the contrary. Rights were acquired and duties performed in accord-

ance with the then law as announced and understood, and in the absence of an express statute to the contrary, the then construction of the law must yet be held to be *the* law governing the acquisition of rights, or the performance of duties of that period. It is well settled that if a contract be valid under the law as previously expounded by the courts, and as understood at the time, no subsequent judicial action will render it invalid. Parties have the right to and do contract with a view to the then law as declared. It is equally just that the same rule should apply as to duties required of them, such as the listing of their property for or the payment of taxation. Otherwise they would not know when or how to act safely as to investment; and it would introduce much uncertainty and mischief into the business of the country. If they comply fully with the existing law, whether it be in the form of positive legislative enactment or judicial interpretation, no more should be required of them."

Franklin County Court *vs.* Lou. & Nash. R. R. Co., 84 Ky., 64 and 65.

The judgment herein of the County Court of Boyle County, Kentucky, decides that the shares of stock in the Citizens National Bank are liable for taxation for county purposes, and have never been assessed or listed for county purposes for the years 1894, 1895, 1896, 1897, 1898, and 1899, and it ordered said shares to be listed and assessed for said purposes in the name of the bank for those years, and that the sheriff collect the taxes so assessed from the bank, with 20 per cent. penalty (Rec., pp. 14 and 50).

This record shows that the aforesaid bank faithfully followed the law during the years 1894, 1895, and 1896 as declared by the Court of Appeals of Kentucky and paid taxes for all of those years, as directed by said court, and, in the language of that court in the case last-above cited, "*no more should be required of it,*" certainly, for those years.

But this court, on April 3, 1899, in the case of Owensboro National Bank *vs.* Owensboro, 173 U. S., 676, declared "that

the taxing law of the State of Kentucky is beyond the authority conferred by the act of Congress, and is therefore void for repugnancy to such act." Whereupon the legislature of Kentucky passed an act, which was approved and became a law on March 21, 1900, providing for the assessment and taxation of shares of stock in national banks, by section 3 of which these shares are to be taxed from 1892.

We therefore conclude that the act of March 21, 1900, upon which this proceeding is based, is wholly *void;* that no valid law prescribing the manner and place of taxing shares of stock in national banking associations has existed in the State of Kentucky from 1892 to March 21, 1900, the day on which this proceeding was instituted, and that during all said time said shares were not taxable in said State.

We respectfully submit that the judgment of the Court of Appeals of Kentucky herein should be reversed, that said court should be directed to enter its judgment herein reversing the judgment of the Boyle Circuit Court, and directing said circuit court to enter its judgment dismissing this proceeding and awarding these defendants therein their costs. All of which is prayed.

ROBERT TAYLOR QUISENBERRY,
Attorney for the Citizens National Bank, M. J. Farris, President; J. A. Quisenberry, Cashier, Plaintiffs in Error.

NOVEMBER 18, 1909.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 135.

THE CITIZENS NATIONAL BANK, M. J. FARRIS, PRESIDENT OF CITIZENS NATIONAL BANK, AND J. A. QUISENBERRY, CASHIER OF CITIZENS NATIONAL BANK, PLAINTIFFS IN ERROR,

vs.

COMMONWEALTH OF KENTUCKY, FOR THE USE AND BENEFIT OF BOYLE COUNTY AND THE COMMONWEALTH OF KENTUCKY, DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

Statement of Case.

It is desired to supplement the statement of this case as presented in brief for plaintiffs in error by directing attention to one additional fact shown by the record.

The judgment of the Boyle Circuit Court (Rec., pp. 73, 74, 75, 76), which judgment was affirmed by the court of Appeals of Kentucky (Rec., pp. 81, 82), and this decision now before this court for affirmance or reversal, caused to be

listed for taxation for county purposes, only those shares of stock in the Citizens National Bank, plaintiff in error, *that were held and owned by citizens and residents of the State of Kentucky*. These shares were ordered to be listed for the years 1896, 1897, 1898, and 1899.

During the first three of these years, of the 1,500 shares of stock of the bank, 1,473 shares were held and owned by local shareholders, and 27 shares by non-resident holders (Rec., p. 69).

In the year 1899, the capital stock of the bank having been decreased, there were 1,000 shares, of which 990 shares were held and owned by residents and citizens of said State (Rec., p. 69). The twenty-per-cent penalty provided for by law is imposed by the judgment against the cash valuation of these shares of local and resident holders.

Points to be Argued.

I.

The act of the General Assembly of the Commonwealth of Kentucky of March 21, 1900, entitled "An act relating to the shares of stock of national banks," and under which act (and section 4241 of Kentucky Statutes) recovery of taxes and penalty by Boyle County, defendant in error, against the Citizens National Bank, plaintiff in error, is sought, created no new right of taxation, and is not retroactive as to local shareholders in national banks.

II.

The act of March 21, 1900, does not discriminate against shares of stock in national banks in Kentucky held by resi-

dents of that State, and said act is not unconstitutional or void because repugnant to any provision of the national banking act or other Federal statute.

III.

The acceptance by the bank of the provisions of Article II, of chapter 92, of the General Statutes of Kentucky, commonly called the Hewitt Law, did not constitute an irrevocable contract, nor is the bank released from the payment of taxes imposed herein by reason of compliance with the terms of said act.

ARGUMENT.

First.

Following the adoption of the present constitution of the Commonwealth of Kentucky, and in 1892, the General Assembly recast the laws of the State, and enacted the Kentucky Statutes. In the revenue portion of these laws, and by sections 4077 *et seq.*, provision was made for the laying and collection of taxes from railway corporations, banks, trust companies, and various other corporations and associations.

The national banks resisted payment of taxes laid and determined under the provisions of this law, claiming they were not laid on the shares of stock in the names of the shareholders, but upon the property of the bank. If not on the property, then on the franchise derived from the United States.

In Owensboro National Bank *vs.* City of Owensboro, 173 U. S., 663, this court sustained the position of the banks, saying, at page 676:

> "The tax then, as defined in the law, as interpreted by the Court of Appeals of Kentucky and by this court in the opinions from which we have excerpted, is a tax nominally on the franchise of the corporation, but in reality a tax on all the intangible property of the corporation. The proposition then comes to this: Nothing but the shares of stock in the hands of shareholders of a national bank can be taxed, except the real estate of the bank. The taxes which are here resisted are not taxes levied upon the shares of stock in the names of the shareholders, but are taxes levied on the franchise or intangible property of the corporation. Thus, bringing the two conclusions together, there would seem to be no escape in reason from the proposition that the taxing law of the State of Kentucky is beyond the authority conferred by the act of Congress, and is therefore void for repugnancy to such act."

This opinion was handed down in April, 1899. Following this decision, and in September, 1899, the sheriff of Clark County, in conformity with the general revenue laws of the State, sections 4020 *et seq.*, Kentucky Statutes, assessed for taxation certain shares of stock in a national bank in that county, held by residents of the county, the assessment being made in the names of these owners, and at the fair cash value of the shares. Suit was brought by these local owners, to prevent the collection of this tax, on the ground chiefly that the legislature had not determined the manner and place of taxing such shares. The assessment was sus-

tained by the Court of Appeals of Kentucky in the case of Scobee, Sheriff, *vs.* Bean, 109 Ky. Reports, 526. The court, after reviewing the revenue laws of the State, said, at page 531:

> "If, as contended by the appellees, and, indeed, as seems to be settled by a number of cases—notably, in Owensboro Nat. Bank *vs.* City of Owensboro, 173 U. S., 664; (19 Sup. Ct., 537); (43 L. Ed., 850)—the association is not taxable directly or on its franchise, then our statutes, by necessary implication, require the stockholder to list his shares of stock for taxation; for by sections 4085 and 4088 the individuals owning shares of stock in corporations which are required to list property are not required to list it so long as the corporation does so. This means, necessarily, that, if the corporation does not list the property and pay the tax, the individual must do so. We think the various statutes are sufficiently broad to constitute a legislative determination and direction of the manner and place of taxing every species of personal estate to be found in the State, and under them such estate is to be taxed, unless by more specific provisions it is to be taxed otherwise; and as the statutes which were intended to apply to the taxation of banking associations and bank stocks, including national banks, have been held void as to national banks, it follows that there is no specific provision for the taxation of the species of personal property in question, and its taxation must be held to be regulated by general law. It is argued by counsel for appellees, in this connection, that these general revenue laws were not intended to apply to the taxation of bank stock, and as the particular law under which it was intended such stock was to be taxed has been held to be ineffectual and void as to shares of stock in national banks, there is

> no law at all under which such shares can be taxed. But it is to be noticed that the general laws are merely declaratory of the requirements of the Constitution (section 174), which declares that 'all property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted;' and while the general provisions of our statute were not intended, perhaps, to be the particular provisions under which bank stocks were in fact to be assessed, still the general provisions, constitutional and statutory, lie at the foundation of the authority to tax, and are sufficiently specific to authorize the taxation of every species of moneyed capital in the State."

The same court, in the case of Commonwealth *vs.* Citizens' National Bank, 117 Ky., 946, in an opinion rendered in April, 1904, sustained the original judgment rendered in this case, saying:

> "The shares in the bank, as held in Scobee *vs.* Bean, might have been assessed every year in the name of the shareholders. The act of 1900 created no new right. It simply gave a new remedy" (Rec., p. 35).

Construing the statutes of its State, the Court of Appeals of Kentucky has distinctly held that prior to the passage of the act of 1900 the shares of stock of resident shareholders in national banks in the State could be assessed in the name of the shareholders and as against said shareholders under existing law.

This same court has further held that the act of 1900 created no new right as against these shareholders, but simply gave a new remedy, that remedy requiring the president and

cashier of these national banks, as agent of the shareholders, where the stock had not been listed for taxation any year or years since the adoption of the revenue law of 1892, to list these shares for taxation under the levy or levies of these respective years, and further made the bank liable for the taxes on said stock due State, county, city, town, or taxing district, and legal penalties.

That the construction of a State statute by the highest court of the State will be followed by this court if no Federal question be involved has been frequently decided.

County of Cass *vs.* Johnston, 95 U. S., 364.
Louisville & Nashville R. R. Co. *vs.* Kentucky, 183 U. S., 503.
Elmwood *vs.* Marcy, 92 U. S., 289.

The shares of stock of the Citizens' National Bank had not been listed for taxation for county purposes during the years 1892, 1894, 1895, 1896, 1897, 1898 by the shareholders or by the bank, and the sheriff of Boyle County instituted this proceeding in conformity with section 4241, Kentucky Statutes (Rec., pp. 86, 87), and the act of March 21, 1900 (Rec., pp. 8, 9). The Statute of Limitations pleaded and relied upon barred recovery for the years 1892, 1894 and 1895. The court by its judgment (Rec., p. 73) sustained the assessment for the years 1896, 1897, 1898 and 1899 as against stockholders who were citizens and residents of the State of Kentucky and the bank, but did not make any assessment as against the few non-resident stockholders in said bank, these non-residents owning 27 shares out of 1,500 during the years 1896, 1897, 1898, and 10 shares out of 1,000 during the year 1899. The name of each shareholder, the year in which he held his stock, and the number of

shares held are set out in detail in the judgment (Rec., pp. 73, 74, 75).

In the case of Covington *vs.* First National Bank, 198 U. S., 100, this court, considering the Kentucky act of March 21, 1900, in connection with section 5219, Revised Statutes, said:

> "Following the State court in the interpretation of its own statutes, it may be said that as to the shareholders residing in Kentucky, and over whom the State has jurisdiction, the Supreme Court of that State has construed its statutes as requiring shareholders of national banks for the years 1893 to 1900, inclusive, to return their shares for taxation; and if they did not make the return, the duty was required of the corporation. In this view of the law it may be that, as to local shareholders, the act of March 21, 1900, as held by the Supreme Court of Kentucky, created no new right of taxation, but gave simply a new remedy, which by the law, is operative to enforce pre-existing obligations. It may be admitted that section 5219 permits the State to require the bank to pay the tax for the shareholders. National Bank *vs.* Commonwealth, 9 Wall., 353; Van Slyke *vs.* Wisconsin, 154 U. S., 581; Aberdeen Bank *vs.* Chehalis County, 166 U. S., 440. * * *
>
> "The statutes of the State of Kentucky, which have been construed by the Supreme Court of that State in the cases cited (Scobee *vs.* Bean, Commonwealth *vs.* Citizens' Nat. Bank, *supra*) to require the payment of taxes by the shareholders or by the bank for its shareholders, can have reference only to shareholders within the jurisdiction of the State."

We submit that in the case at bar the views of this court as above expressed have been met in full.

The judgment of the Kentucky courts requires the payment of taxes and penalties due only by shareholders within the jurisdiction of the State, and requires the taxes and penalties to be paid by the bank for the shareholders. But continuing its opinion in the case of Covington *vs.* First National Bank, *supra,* this court said:

> "Whether the system operates as a discrimination against national banks within the prohibition of section 5219, involving, as it does, a right of Federal creation must be ultimately determined in this court.
> * * *
> "Without considering the question of constitutional power to tax non-resident shareholders by means of this retroactive law, it seems to us that in imposing upon the bank the liability for the past years, for taxes and penalty, upon stock held without the State, and which before the taking effect of the act under consideration it was not required to return, there has been imposed upon national banks in this retroactive feature of the law a burden not borne by other moneyed capital in the State. This law makes a bank liable for taxes upon property beyond the jurisdiction of the State, but required to be returned by the bank as agent for the shareholders, by a statute passed in pursuance of the authority delegated in section 5219, thus imposing a burden not borne by other moneyed capital within the State."

In considering this language, we insist:

A.

That so far as the Kentucky Statutes have been construed by the Court of Appeals of Kentucky, there has been no direct holding that these statutes are broad enough to cover im-

position of taxes upon non-resident shareholders. The Scobee case referred alone to resident shareholders.

When this case was before the Court of Appeals of Kentucky, and opinion rendered in 1904 (Rec., pp. 31 to 35, incl.), there was nothing in the record that showed there were any non-resident shareholders in the Citizens' National Bank. This plea had not been made by the bank, and was not made until 1907 (Rec., pp. 66 to 69, incl.), when an amended answer and response on the part of the bank was filed after the case had been in this court upon a former appeal, which was dismissed for want of final decree in the court below (199 U. S., 603).

Where the State court has enforced its State's laws as against those falling clearly within constitutional right will this court hold the law unconstitutional because perhaps it might in the reach of its language include others against whom the tax could not be constitutionally enforced?

The shares of non-resident shareholders have not been listed, and this court has said that the bank can, under the Federal Statutes, be made liable for the tax of its local shareholders.

In the case of Supervisors *vs.* Stanley, 105 U. S., 305, Mr. Justice Miller, in delivering the opinion of this court, said:

> "On the other hand, if the law is for any purpose a valid law, and if it can be held to furnish the rule of taxation as to any class of owners of national banks' shares, then the onus is on plaintiff to show that his assignors are not of that class. * * *
>
> "Accepting, therefore, as we must, the act of 1866, as construed by the Court of Appeals of New York, as not authorizing any deduction for debts by a share-

holder of a national bank, is it for that reason absolutely void? * * *

"It is very difficult to conceive why the act of the legislature should be held void any further than when it affects some right conferred by the act of Congress."

In Austin *vs.* The Aldermen, 7 Wall., 694, the court said:

"The plaintiff in error lived in Boston, and was the owner of stock in six national banks there situated, and the valuation and assessment were there made.

"It is not denied that this was in conformity to the act of Congress, but it is insisted that the taxes assessed were illegal and void, because the statute of the State requires that they shall be assessed at the place of the residence of the shareholder, without reference to the locality of the bank.

"The only question of Federal jurisdiction, and of which this court can take cognizance, is whether the plaintiff in error has been deprived of any right, contrary to the act of Congress, upon which he relies for protection."

If the Kentucky Statutes provide a legal method for collecting the tax and penalties due by the local shareholders in national banks where the property has not been listed for taxation as required by State law, this court has indicated clearly a method that can be adopted to collect taxes due by non-resident shareholders.

"If the State of Kentucky had a claim against a stockholder of the bank who was a non-resident of the State, it could undoubtedly collect the claim by legal proceeding, in which the bank could be attached or garnisheed, and made to pay the debt out of the means of its shareholder under its control." (National Bank *vs.* Commonwealth, 9 Wallace, 353.)

B.

But does the Kentucky system now being considered operate as a discrimination against national banks within the prohibition of section 5219? It may first be questioned whether or not this proposition was before the Court of Appeals of Kentucky when it rendered its opinion or now before this court.

In National Bank *vs.* Commonwealth, 9 Wall., at pages 363, 364, the court said:

> "It is said here in argument that the tax is void because it is greater than the tax laid by the State of Kentucky on other moneyed capital in that State. This proposition is not raised among the very distinct and separate grounds of defense set up by the bank in the pleading. Nor is there any reason to suppose that it was ever called to the attention of the Court of Appeals, whose judgment we are reviewing. We have so often of late decided, that when a case is brought before us by writ of error to a State court, we can only consider such alleged errors as are involved in the record, and actually received the consideration of the State court, that it is only necessary to state the proposition now. As the question thus sought to be raised here was not raised in the Court of Appeals of Kentucky, we cannot consider it."

We do not find this proposition raised in the various grounds of defense set up by the bank in its pleading, nor do we find it relied upon by counsel for plaintiffs in error in brief filed. The contention of counsel is (page 13):

> "The very language of the above section (section 3, act March 21, 1900) shows that its provisions relate

> to the bank, and not to shares of stock therein, because by its terms the bank is excepted from the operation of said section in case it has paid taxes upon its franchise for any of the years involved, and further, the bank is 'entitled to credit upon its State taxes required by this act' for any excess of the State taxes required by said act which it may have paid under the Hewitt bill."

And at page 30 of the brief:

> "We respectfully submit that the conclusion is inevitable that the act of March 21, 1900, while nominally taxing the shares of stock of national banks, in reality imposes a tax upon the assets of the bank, and not upon the shares, and that the opinions of the Court of Appeals of Kentucky, herein, so construe said act, and that said act is in conflict with sections 5210 and 5219 of the United States Revised Statutes, and therefore void."

Replying to the first and chief contention of plaintiffs in error, that the laws of Kentucky under consideration really impose a tax upon the assets of the bank, and not upon the shares of the shareholders, the conclusive answer seems to be found in the opinion of this court in the case above referred to, of National Bank *vs.* Commonwealth, where the court said, at pages 359 *et seq.*:

> "There are, then, but two questions to be considered in the case before us:
>
> "1. Does the law of Kentucky, under which this tax is claimed, impose a tax upon the shares of the bank, or upon the capital of the bank, which is all invested in government bonds?
>
> "2. If it is found to be a tax on the shares, can the

bank be compelled to pay the tax thus levied on the shares by the State?

"The revenue law of Kentucky imposes a tax 'on bank stock, or stock in any moneyed corporation of loan and discount, of fifty cents on each share thereof, equal to one hundred dollars of stock therein, owned by individuals, corporations, or societies.'

"We entertain no doubt that this provision was intended to tax the shares of the stockholders, and that if no other provision had been made, the amount of the tax would have been primarily collectible of the individual or corporation owning such shares, in the same manner as other taxes are collected from individuals. * * *

"But it is strongly urged that it is to be deemed a tax on the capital of the bank, because the law requires the officers of the bank to pay this tax on the shares of its stockholders. Whether the State has the right to do this we will presently consider, but the fact that it has attempted to do it does not prove that the tax is anything else than a tax on these shares. It has been the practice of many of the States for a long time to require of its corporations, thus to pay the tax levied on their shareholders. * * *

"We are, therefore, of opinion that the law of Kentucky is a tax upon the shares of the stockholder. If the State cannot require of the bank to pay the tax on the shares of its stock it must be because the Constitution of the United States, or some act of Congress, forbids it. There is certainly no express provision of the Constitution on the subject. * * *

"A very nice criticism of the proviso to the 41st section of the National Banking Act, which permits the States to tax the shares of such bank, is made to us to show that the tax must be collected of the shareholder directly, and that the mode we have been con-

sidering is by implication forbidden. But we are of opinion that while Congress intended to limit State taxation to the shares of the bank, as distinguished from its capital, and to provide against a discrimination in taxing such bank shares unfavorable to them, as compared with the shares of other corporations, and with other moneyed capital, it did not intend to prescribe to the States the mode in which the tax should be collected. The mode under consideration is the one which Congress itself has adopted in collecting its tax on dividends, and on the income arising from bonds of corporations. It is the only mode which, certainly and without loss, secures the payment of the tax on all the shares, resident or non-resident."

In Lionberger *vs.* Rouse, 9 Wall., 468, the court, considering a provision of the Missouri statute which required the tax assessed on shares of stock to be paid by the corporations respectively, said, at page 477:

"It is objected that the mode of assessment provided by the general revenue law of the State, is inconsistent with the provisions of the act of Congress of June 3d, 1864, as it requires the tax assessed on the shares of stock, to be paid by the corporations respectively instead of the individual shareholders. This was one of the questions in the case of the National Bank *vs.* Commonwealth, decided at this term, and it was there held that this mode of assessment was not inconsistent with the terms of the law, but in all respects unobjectionable. It is unnecessary to repeat the arguments presented in that case, or to consider the point further, as we see no reason to question the soundness of that decision."

The views of this court as expressed in the above two decisions have been confirmed in subsequent cases.

Van Slyke *vs.* Wisconsin, 154 U. S., 581.
Aberdeen Bank *vs.* Chehalis County, 166 U. S., 440.

But we submit that under the Kentucky statutes considered here and construed by the highest court of that State, there is in fact no discrimination against the shareholders in national banks or the banks, for they are placed on the same footing with the owners of all other property within the State, and their shares taxed and penalties affixed under these laws just as other personal property is taxed and penalties assessed.

Section 4020, Kentucky statutes, provides that all real and personal estate within this State, and all personal estate of persons residing in this State, and all corporations organized under the laws of this State, whether the property be in or out of the State, including intangible property which shall be considered and estimated in fixing the value of corporate franchises as herein provided, shall be subject to taxation, unless the same be exempt from taxation by the Constitution, and shall be assessed at its fair cash value estimated at the price it would bring at a fair voluntary sale.

Section 4241 of the same statutes, requires the sheriff or auditor's agent to cause to be listed for taxation *all* property omitted, or any portion of property omitted by the assessor, board of supervisors, board of valuation and assessment, or railroad commission, for any year or years. It then provides for proper court proceedings to be had by the sheriff or auditor's agent, and then says:

"If the court shall decide that the property is liable to assessment, the clerk of the court shall certify to the auditor of public accounts and the sheriff a description of the property and the amount of the assessment for taxation, together with the amount of penalty and cost of assessment. All persons owning property which may be assessed as herein provided shall in addition to the taxes pay a penalty of twenty per centum on the amount of the taxes due and cost of assessment, except where such property shall have been duly listed by the owner thereof."

The act of March 21, 1900, simply requires the president and cashier of national banks to list the shares of stock from 1892 to 1900, where they have been omitted by the owner or bank, and the bank to be liable for these taxes, whether State, county, or city. In other words, the bank officers as agents of the stockholders, are required to list the shares, and secondly, the bank to be liable for the tax and penalties assessed against the omitted shares.

Under the decision of this court, both of these propositions are allowable and have been sustained, and although there may have been a change in the body of the shareholders, yet each person buying a share of stock in a national bank takes it with all of the liabilities and liens then existing against said share. Neither the bank nor its shareholders can reasonably complain in this cause, because payment of county taxes for the years 1892, 1894, and 1895 have been utterly escaped, and this bank has held in its possession, and doubtless utilized for profit purposes, and for many years, the taxes justly due from 1896 to 1899, inclusive.

Second.

The second point presented for argument in brief for plaintiffs in error is that the bank is exempt from payment of the taxes claimed herein, by reason of its acceptance of the provisions contained in what is commonly called the Hewitt act of the General Assembly of Kentucky, passed in 1886, being article II, of chapter 2, of the General Statutes of that State.

This question has been considered by this court, and the defense held not good.

In the case of Citizens' Savings Bank of Owensboro *vs.* Owensboro, 173 U. S., 636, this court, at page 641, speaking through Mr. Justice White, said:

> "Sixth. The taxes were expressly and particularly attacked on the ground that the Hewitt act, and the acceptance of the terms thereof, constituted an irrevocable contract, between the State and the bank, exempting it from all taxation other than as specified in the Hewitt act, and therefore that the revenue act of 1892 and the levy of the taxes in question by the city of Owensboro violated the contract rights of the bank, which were protected from impairment by the Constitution of the United States."

This opinion then considers at length this contention of the bank, and concludes at page 645, with these words:

> "Our conclusion being that there was no irrevocable contract protecting the bank from taxation, and therefore that the taxing law of Kentucky did not violate the contract clause of the Constitution of the United States, it follows that the decree below must be and it is affirmed."

In the case of the City of Covington *vs.* First National Bank of Covington, *supra*, this court said that the acceptance of the provisions of the so-called Hewitt law did not constitute an irrevocable contract releasing the bank from taxes upon compliance with its terms.

With these opinions before us, it seems improper to present any extended argument upon the second point relied upon in brief for plaintiffs in error.

Third.

The 17th assignment of errors herein (Rec., p. 87; brief for plaintiffs in error, page 10) is in the following words:

> "17. The decisions herein of the Court of Appeals of Ky., authorizing the deduction of U. S. bonds owned by national banks from assessment of the property of national banks, is in contravention of section 5219 of the U. S. Revised Statutes."

At pages 29, 30 of the brief the action of the Boyle Circuit Court in refusing to allow the defendants below, plaintiffs in error here, to file an amended rejoinder setting up the amount of the bank's capital, surplus and undivided profits, and what proportion of the sum total of these items was invested in United States Government bonds from 1896 to 1899, inclusive, is argued, and we suppose relied upon as error.

This proceeding against the bank was instituted March 15, 1901 (Rec., pp. 1, 2); the answer and response of the bank and its officers filed July 1, 1901 (Rec., pp. 4 to 9, incl.); the replication of defendant filed July 5, 1901 (Rec., pp. 10, 11, 12).

When this case was first heard in the Court of Appeals of Kentucky, although the Statute of Limitations had not been pleaded by the bank, the court said (Rec., p. 35):

> "Limitation was not pleaded as to the retrospective assessments, but we have held in several cases that retrospective assessments were barred after five years from the time the property should have been assessed. * * * The statute began running when the property might have been assessed, and the right to make the assessment after five years is barred. On the return of the case the defendants will be allowed to amend their answer and set up limitation if they desire to do so."

On the 30th of January, 1907 (Rec., pp. 66, 67, 68, 69), an amended answer and response was filed by the bank and its officers, pleading and relying upon the Statute of Limitations, and this plea was sustained as to the years named. In that amended response appears the following language (Rec., p. 69):

> "These defendants state that this amended answer and response, together with their original answer and response, constitute their entire answer and response to the statement filed by the plaintiffs herein."

On January 30th the reply of Boyle County to this amended answer and response was filed (Rec., p. 70); demurrer to same overruled, and on the 15th day of April, 1907, the bank tendered an offer to file an amended rejoinder, to which counsel for Boyle County objected, which amended rejoinder (Rec., pp. 77, 78) was a recital of the capital of the bank, its surplus and undivided profits, and the value of U. S. Government bonds held during the years

1896 to 1899, inclusive. The Circuit Court refused to allow this amendment to be filed, and the Court of Appeals of Kentucky in its opinion (Rec., p. 81) says:

> "When the case was ready for final trial, the plaintiff tendered an amended rejoinder, in which it was set forth that a part of the bank's capital and surplus was invested in United States bonds, and that United States bonds were allowed as an exemption from taxation in favor of the State banks, and asked that the amount of those held by it be deducted each year in applying the tax levies. Upon the former appeal, and also in the case of The Citizens' National Bank of Lebanon *vs.* Commonwealth, 25 Ky. Law Rep., 2254, we held, in applying the statute of 1900, which is involved here, that the stockholders in national banks are entitled to precisely the same exemption as State banks; and undoubtedly, if the exemption had been properly pleaded and at the proper time, it would have been allowed. The claim of exemption should have been set up in the answer instead of the rejoinder, as the reduction claimed was a defense *pro tanto* to the cause of action set up in the petition. The trial judge is invested by law with wide discretion in the matter of permitting amendments, and we have seldom interfered with the exercise of this discretion, and never except upon sufficient cause for our action. No reason is given in the record for the failure to claim the exemption in proper time, and we, therefore, do not feel at liberty, without cause shown, to overrule the order of the trial court in refusing to allow the tendered amendment to be filed: first, because it came too late, and second, because it was not contained in the answer or an amended answer."

If the plaintiffs in error rely upon the action of the court below in refusing to allow this amendment to be filed, as an

error to be considered by this court, the answer to the contention can best be made in the exact language of this court.

> "The first assignment of error, namely, that the court erred in allowing the second amended petition to be filed, has been so frequently considered and declared unfounded by this court that it may be dismissed with the remark that amendments are discretionary with the court below, and not reviewable here. See the opinion of the court in the case of Chapman *vs.* Barney, 129 U. S., 667, decided March 5, 1889, and authorities there cited" (Bullitt Co. *vs.* Washer, 130 U. S., at page 145).

In Gormley *vs.* Bunyan, 138 U. S., at page 630, the court said:

> "The first three assignments of error cover the whole case, and are as follows:
>
> "The first is, that the court erred in refusing to allow the plaintiff in error to file the several pleas of *non est factum,* Statutes of Limitation, payment and set-off. The reply to this is, that as long as Mandeville *vs.* Wilson, 5 Cranch, 15, 17, and as late as Chapman *vs.* Barney, 129 U. S., 677, it has been held that the granting or refusal of leave to file an additional plea, or to amend one already filed, is discretionary with the court below, and not reviewable by this court, except in a case of gross abuse of discretion."

Concluding, it is respectfully asked that the decisions of the Court of Appeals of Kentucky construing the statutes of that State, and under them requiring the payment of the taxes due by local shareholders in this bank, and legal penalties accrued on same, be sustained and affirmed.

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